167-606

167-606

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. ~~270.~~ 39.

THE TUG "GLIDE" AND OWNERS, PLAINTIFFS IN ERROR,

vs.

THE ATLANTIC WORKS.

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF MASSACHUSETTS.

FILED SEPTEMBER 28, 1893.

(15,403.)

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THE ATLANTIC WORKS.

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF MASSACHUSETTS.

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1 THE UNITED STATES OF AMERICA, }
Commonwealth of Massachusetts. }

The Atlantic Works, a corporation duly organized under the laws of the Commonwealth of Massachusetts, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the superior court of the Commonwealth of Massachusetts, wherein "Owners of Tug Glide" are plaintiffs in error and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Albert Mason, chief justice of the superior court of the Commonwealth of Massachusetts, United States,
2 this eleventh day of September, in the year of our Lord one thousand eight hundred and ninety-three.

ALBERT MASON,
Chief Justice of the Superior Court.

Service of the within citation is accepted this twenty-fifth day of September, A. D. 1893, but no objection to the sufficiency of said citation in any respect or to the sufficiency of the time of service, as concerns the number of days between this said 25th day of September and the said second Monday of October next, as mentioned in said citation, is hereby in any degree waived.

THE ATLANTIC WORKS,
By WHITTIER & FOSTER, *Attorneys.*

3 (*Bond to Party on Appeal.*)

Know all men by these presents that we, Edward B. Wildes and George D. Wildes, both of Ipswich, of Essex county, Commonwealth of Massachusetts, are held and firmly bound unto The Atlantic Works, a corporation duly organized under the laws of the Commonwealth of Massachusetts and having a usual place of business in Boston, in the full and just sum of five hundred dollars, to be paid to the said Atlantic Works, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated the eleventh day of September, in the year of our Lord one thousand eight hundred and ninety-three.

Whereas lately, at a sitting of the superior court of Massachusetts for the county of Suffolk, in a suit depending in said court between The Atlantic Works, of Boston, Mass., and The Tug Glide, a decree was rendered against the said tug Glide, of Boston, Mass., and the owners of said tug Glide having obtained an appeal to remove the

said cause to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Atlantic Works, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said owners of tug Glide shall prosecute the said appeal to effect and answer all costs if they fail to make their plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

GEORGE D. WILDES. [L. S.]
EDWARD B. WILDES. [L. S.]

Signed, sealed, and delivered in presence of—

——— ———.

Approved:

——— ———.

A true copy of the bond taken by the judge at the time of allowing the appeal named in said bond, which bond is on file in the office of the clerk of the superior court for the county of Suffolk, Commonwealth of Massachusetts.

Attest: JOS. A. WILLARD,
Clerk of the Superior Court for the County of Suffolk.

[Endorsed:] Atlantic W'ks *v.* Tug Glide. Bond.

1 UNITED STATES OF AMERICA, *ss*:

[Seal of the Circuit Court, Massachusetts.]

The President of the United States to the honorable the judges of the superior court of the Commonwealth of Massachusetts, holden at Boston, within and for the county of Suffolk, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said superior court, before you or some of you, being the highest court of law or equity of the State of Massachusetts in which a decision could be had in the suit between The Atlantic Works, of said Boston, plaintiff, and The Tug "Glide" and owners, defendants, in a plea of jurisdiction to a process *in rem*, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute,

or commission, a manifest error hath happened, to great damage of the said defendants, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville Weston Fuller, Chief Justice of the said Supreme Court, the ninth day of September, in the year of our Lord one thousand eight hundred and ninety-three.

ALEX. H. TROWBRIDGE,
Clerk of the Circuit Court of the United States,
District of Massachusetts.

Allowed by—
ALBERT MASON.
Chief Justice Superior Court.

5 COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

And now, here, the judges of the superior court in and for said county make return of this writ by annexing hereto and sending herewith, under the seal of the said superior court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

Seal of the Superior Court.

In testimony whereof I, Jos. A. Willard, clerk of said superior court, have hereto set my hand and the seal of said court this eleventh day of September, A. D. 1893.

JOS. A. WILLARD, *Clerk.*

6 COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

Superior Court.

ATLANTIC WORKS }
vs.
TUG "GLIDE." }

Assignment of Errors.

The claimants and defendants, being aggrieved by the judgment, rulings, and findings of the superior court of the Commonwealth of

Massachusetts and of the supreme court of said Commonwealth, and the said rulings and findings draw in question and are in derogation of the Constitution and of the statutes of the United States of America, hereby make the following assignment of errors:

First. That the said court should have declined to take jurisdiction of this action.

Second. That under the Constitution and laws of the United States an action of this nature, being an action *in rem*, can only be forced in a district court of the United States, and a State court is without jurisdiction.

Third. That a process *in rem* against a vessel is within the exclusive jurisdiction of the courts of the United States in admiralty under the Constitution and laws of the United States.

7 Fourth. That the provisions in the Public Statutes of Massachusetts, chapter 192, sections 17, 18, 19, 20, and 21, relating to the enforcement of a domestic lien for supplies by a process *in rem* in a State court, is contrary to the provisions of the Constitution and laws of the United States.

And for failure of the court to find in the manner prescribed, and for other reasons, the defendants have applied for a writ of error to the Supreme Court of the United States, and pray that the assignment of errors may be allowed.

THE DEFENDANTS,
By EUGENE P. CARVER,
Their Attorney.

[Endorsed:] 2465. Atlantic Works *vs.* Tug "Glide." Assignment of errors.

8 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss.*:

To all persons to whom these presents shall come, Greeting:

Know ye that among our records of our superior court for the said county of Suffolk it is thus contained, the following being the entire record in the case:

SUFFOLK, *ss.*:

Superior Court.

THE ATLANTIC WORKS
v.
TUG "GLIDE" and OWNERS.

BOSTON, *October 19th*, 1891.

The petition of the (sic) The Atlantic Works respectfully shows that it is a corporation duly established under the laws of the Commonwealth of Massachusetts, and having its usual place of business in said Boston, in said Commonwealth, and that Alfred E. Cox, of Malden, Middlesex county and said Commonwealth, is its treasurer; that by virtue of a contract with Jonathan Chase, of said Boston,

the said The Atlantic Works did, at various times between July 20th, 1887, and February 1st, 1891, perform and furnish labor and furnish and use materials in the repairs of a certain steam vessel called the "Glide," said "Glide" being a tugboat owned by said Jonathan Chase, together with John Morrison, Henry R. Lawler, Helena H. Chase, and Mark A. Kearns, all of said Boston, so far as known to the petitioner; that said "Glide" belongs to the port of Boston, at which port she was when labor and materials were furnished, performed, and used as aforesaid; that the amount due for said labor and material-, after deducting all just credits, is thirteen hundred ninety-five $\frac{64}{100}$ dollars, according to the account hereto annexed, and interest from February 1st, 1891, when, or about when, demand of payment was made; that said labor consisted of machine, boiler, smith, pattern, draughting, and coppersmith labor and use of tools; that said materials comprised castings, forgings, and other metals; that the petitioner, pursuant to "Public Statutes of Massachusetts," chapter 192, and conformably to the provisions thereof, duly filed a sworn statement in the office of the clerk of the city of Boston aforesaid. Wherefore the petitioner prays that said vessel may be sold and the proceeds of the sale applied to the discharge of the demand as hereinbefore set forth.

THE ATLANTIC WORKS.
ALFRED E. COX, *Treas'r.*

"A."

Stm. Glide and owners to the Atlantic Works, 60 to 76 Border street, near North ferry, Dr.

EAST BOSTON, *February 1st*, 1891.

1887.								
July	30.	For comp. castings, bolts for stern-bearing	lbs.	61	30	18	30	1
		" cement, stern-bearing	"	15½	15	2	33	2
		" rivets, propeller patches	"	14	5		70	3
		" solder, oil-cup	"	¾	20		15	4
		" hand-hole gasket, del. eng	pc.	1	..		15	5
		" red paint, " firemen	lbs.	8	12		96	6
		" pattern stock, bolts	f.	1	..		09	7
		" teaming		..	..	1	00	8
		" mach. labor—boring holes in stern-bearing, turning & cutting bolts for do	hrs.	9½	40	3	80	9
		" mach. labor, lathe & drill on do	"	15	50	7	50	10
		" " " on board	"	58	40	23	20	11
		" running engine, extra	"	1	..	2	00	12
		" smith labor, rivets	"	1	..		40	13
		" boiler " on board	"	30	35	10	50	14
		" coppersmith labor, rep'g oil-cup	"	1	..		40	15
		" pattern " bolts	"	1	..		45	16
Aug.	31.	" iron castings, furnace-door linings	lbs.	70	3½	2	45	17
		" comp. " safety valve	"	7	30	2	10	18
		" plate-iron sockets, sockets for door lining	"	2	15		30	19
		" plate iron, flange for safety valve	"	9	5		45	20
		" bolts & nuts, do.	pc.	25	..	1	82	21
		" iron forgings, bolts for safety-valve stem & lever	lbs.	1¼	04		06	22
		" nuts, do	"	½	16		08	23

	" washers, door linings	"		$\frac{1}{2}$	8		04		24
	" usudurian packing, safety valve	"		$2\frac{1}{2}$	80	2	00		25
	" fusible plug, del. eng	pc.		1			50		26
	" red paint, " "	lbs.		6	12		72		27
	" 1 glo. valve, $1\frac{1}{2}$, 3.90; 1 hc. lock-nut, 1, .25; 1 do. nipple, 1, .60		4 75						28
	" 6 nipples, $1\frac{1}{2}$ 25, 1.50; 1 cap, $1\frac{1}{2}$, .22; 1 coupling, $1\frac{1}{4}$, .17		1 89						29
	" 1 tee, $1\frac{1}{2}$, .48; 4 elbows, $1\frac{1}{2}$ 38, 1.52; 1 plug, $1\frac{1}{2}$, .13		2 13						30
	" 1 do., $\frac{3}{4}$, .063; 2 pipe clips, $1\frac{1}{2}$ 5, .10		13						31
			8 90						
	Less 50 %		4 45	32				4	45
	" $12\frac{1}{2}$ ft. $1\frac{1}{2}$ pipe, 22		2 75						33
	Less 40 %		1 10	34				1	65
	" mach. labor—turning & fitting new safety valve, facing seat, grinding & fitting up valve, turning & cutting bolts for safety-valve stem & lever, drilling door linings, drilling pipe-strainer, rep'g syphon, cutting & fitting pipe & fittings	hrs.		$16\frac{1}{2}$	40	6	60		35
	" mach. labor, lathe & drill on do.	"		$14\frac{1}{2}$	50	7	25		36
	" " " on board	"		36	40	14	40		37
	" smith " bolts for safety valve	"		1	"		40		38
Oct. 31.	" iron castings, piston & plugs for do.	lbs.		254	$3\frac{1}{2}$	8	89		39
	" comp. " false valve face for throttle	"		5	30	1	50		40
	" iron forgings, main valve stem nut	"		7	4		28		41
	" Norway do. do., studs for steam chest, thumb-screw for reverse lever, & addition to throttle-valve stem	"		9	6		54		42
	" steel do., keys for reverse lever wrench pr. eng	"		7	8		56		43
	" cast do. do., piston rings & liner for valve	"		7	20	1	40		44
	" Muntz metal, pins for throttle-valve face & del. fireman	"		6	35	2	10		45
	" bolts & nuts, steam chest, steam pipe, & del. eng. & fireman	pc.		9	"		99		46
	" nuts, do	lbs.		$1\frac{1}{2}$	16		24		47
	" washers, do	"		$\frac{1}{2}$	8		04		48
	" usudurian packing, steam chest & throttle & del. eng	"		$15\frac{1}{2}$	80	12	20		49
	" usudurian packing, engine	lbs.		$1\frac{1}{2}$	64		96		50
	" rivets, propellor patches	"		7	5		35		51
	" waste, del. eng	"		7	10		70		52
	" emery cloth, " "	sh.		2	5		10		53
	" white lead, " "	lbs.		2	8		16		54
	" Portland cement, " "				"		10		55
	" red paint, " fireman	"		7	12		84		56
	" potash, " "	cans,		3	"		36		57
	" putty, " "	lbs.		4	5		20		58
	" pattern stock piston:								
	" 2 nipples, $\frac{3}{4}$, .11, .22; 1 elbow, $\frac{3}{4}$, .15; 1 do., $1\frac{1}{4}$, .32		69						59
	" 1 lock-nut, 1, .08; 1 union, 1, .34; 1 br. coupling, $1\frac{1}{4}$, .50		92						60
	" 1 Jenkins valve, $\frac{3}{4}$, 2.20		2 20						61
			3 81						
	Less 50 %		1 90	62				1	91

	" 2 ft. 1″ pipe, 9½, .19; $\frac{5}{12}$ ft. ¾″ pipe, 7, .05		24						62*a*
	Less 20%		05	63					
					..	..	19		
	" iron forgings, piston-rod nut	lbs.			7	4	28		64
	" use of hydrant, filling boiler	hrs.			$\frac{2}{60}$	5 00	2 08		65
	" mach. labor—turning, planing, filing, & fitting up piston & nut; drilling & tapping piston; turning, cutting, & fitting plugs to do.; filing & fitting piston springs; rep'g thread on piston-rod & fitting do. to piston; planing con. rod box; filing & fitting steel liners for valve; fitting up reverse lever; fitting do. to quadrant; turning & cutting thumb-screw for do.; turning throttle-valve stem; planing, scraping, & filing & fitting throttle valve & false valve face; turning *of* main valve stem; splining main valve socket; planing main valve; turning, cutting, & fitting new nut to do.; cutting pipe; turning & cutting studs for steam chest	hrs.			147¾	40	58 90		66
	For mach. labor—lathe, planer, & spliner & drill on do.	"			115½	50	57 75		67
	" mach. labor, on board	"			171	40	68 40		68
	" running engine at night, piston	"			7	2 00	14 00		69
	" smith labor—piston springs, key for reverse lever wrench, thumb-screw for reverse lever, main valve stem, piston-rod, nuts, rivets for propellor patches, *bazy*-bar, rep'g fire-tools, & setting pipe	"			31½	40	12 60		70
	" boiler labor, on board	"			7½	35	2 63		71
	" pattern labor, piston & throttle false valve face	"			7	45	3 15		72
	" use of blocks	tides,			1	..	3 00		73
Nov. 30.	" comp. castings, check-valve for pump,	lbs.			1	30	30		74
	" 1 angle valve, ¾		1 35	75					
	Less 50%		67	76					
					..	..	68		
	" cement, del. eng	lbs.			1	..	15		77
	" mach. labor, turning & fitting check-valve	hrs.			1	..	40		78
	" mach. labor, lathe do.	"			1	..	50		79
	" " " on board	"			4	40	1 60		80
Dec. 31.	" plate iron, propellor patches	lbs.			234	5	11 70		81
	" Norway iron forgings, rivets, do.	"			14	6	84		82
	" sheet lead, do.	"			37	8	2 96		83
	" 1 glo. valve, ¾, 1.35; 1 do. do., ¼, .60; 1 br. cock, ¼, .40		2 35	84					
	" 1 br. nipple, ¼, .15; 1 br. union, ¼, .35; 1 union, ¾, .28		78	85					
	" 2 nipples, ¾, .11, .22; 1 elbow, ¾, .15; 1 lock-nut, ¾, .07		44	86					
			3 57						
	Less 45%		1 61	87					
					..	..	1 96		
	" 1 cm. union, ¾		30	88					
	Less 20%		06	89					
					..	..	24		
	" 4 ft. ¾″ pipe, 7, .28; 4$\frac{12}{12}$ ft. 1¼ pipe, 12½, .60		88	90					
	Less 20%		18	91					
					..	..	70		

		" teaming						75	92
		For mach. labor—rep'g oil-cup & cutting pipe	hrs.	4	40	1 60			93
		" mach. labor, on board	"	3½	"	1 40			94
		" smith " rivets for propellor patches	"	2½	"	1 00			95
		" pattern labor, propellor	"	2	45	90			96
		" boiler " on board	"	65½	35	22 93			97
1888.									
Jan.	31.	" 1 propellor, bored & keyway cut				101 75			98
		" plate steel, propellor patches	lbs.	119	8	9 52			99
		" Norway iron forgings, rivets, do.	"	17	6	1 02			100
		" cement, propellor	"	6	15	90			101
		" sheet brass, liner for cross-head	"	¼	32	08			102
		" solder, oil-cup	"	½	30	15			103
		" lampwick, del. fireman	balls.	2	5	10			104
		" white lead, do.	lbs.	1		08			105
		" 1 tee, 1½, del. eng		48					106
		Less 45%		22	107				
						26			
		" teaming propellor & tools				1 70			108
		" mach. labor—propellors, rep'g oil-cup, planing & fitting propellor, key filing & fettering liners for cross-head	hrs.	9	40	3 60			109
		" mach. labor, planer, do.	"	2	50	1 00			110
		" " " on board	"	23	40	9 20			111
		" smith " rivets for propellor patches	"	2½	40	1 00			112
		" boiler labor, patching propellor	"	42	35	14 70			113
Feb.	29.	" crank-shaft forgings	lbs.	650	13	84 50			114
		" iron forgings, strap for crank	"	103	4	4 12			115
		" bolts, do.	pc.	3		57			116
		" nuts, do.	lbs.	5	16	80			117
		" solder, steam pipe	"	12	30	3 60			118
		" teaming crank from R. R.				50			119
		" 1 Am. union, 1, .36; 1 do. do., 1½, .65		1 01					120
		Less 20%		20	121				
						81			
		" 1 coupling, ½, .07; 1 do., 1, .35; 7 nipples, 1, .15, 1.05		1 47					122
		" 2 do., 1½, .25, .50; 4 elbows, 1, .22, .88; 2 br. nipples, 1, .60, 1.20		2 58					123
		" 1 glo. valve, 1, 1.80; 1 do., ¾, 1.35; 1 angle valve, ¾, 1.35		4 50					124
				8 55					
		Less 45%		3 85	126				
						4 70			
		" 1 Hart check-valve, 1½		4 25					127
		Less 25%		1 06	128				
						3 19			
		For 1 ft. 1½ pipe		22					129
		Less 40%		09	130				
						13			
		" 2 ft. ½ pipe, 5		10					131
		Less 20%		02	132				
						08			
		" mach. labor—fitting up strap & bolts for crank, cutting pipe & bolts for pump	hrs.	14½	40	5 80			133
		" mach. labor, lathe planer & drill on do.	"	13½	50	6 63			134
		" mach. labor, on board	"	35½	40	14 30			135

	" smith labor, strap for crank	"	29		"	11	60	136
	" use of steam hammer					1	00	137
	" coppersmith labor—rep'g steam pipe	"	3		"	1	20	138
	" draughting labor, crank shaft	"	3		60	1	80	139
March 31.	For 1 smokestack, as per contract					70	00	140
	" iron castings, couplings	lbs.	178		3½	6	23	141
	" comp. castings—bushing for pump-rod gland & reverse, shaft bushing for link block, seats for check-valve, crank-pin box, nut for pump rod	"	71		34	24	14	142
	" grate bars	"	141		2½	3	52	143
	" iron forgings—bolts for hull, band for tiller, nut for pillow-block stud, pin for ecc. for feed-pump	"	19		4		76	144
	" Norway do. do., bolts for cut-off & studs for pillow block	"	6		6		36	145
	" soft patch steel, boiler repairs	"	21		8	1	68	146
	" plate iron, "	"	23		5	1	15	147
	" sheet lead, "	"	7		8		56	148
	" bolts & nuts—boiler, hull, pump, & del. eng	pc.	74			5	43	149
	" washers, boiler & del. fireman	lbs.	3¾		8		30	150
	" nuts, pillow-block studs & hull bolts	lbs.	2		16		32	151
	" cement, boiler & propellor	"	34		15	5	10	152
	" Babbitt metal, crank-pin box	"	5		55	2	75	153
	" steel forgings—pins for link, keys for propellor, coupling & ecc. & pinch-wheel	"	29		8	2	32	154
	For sheet brass & wire, liners & pins for con.-rod box & link	lbs.	1½		32		48	155
	" usudurian packing, check-valve & del. eng	"	4		80	3	20	156
	" anti-friction packing, pump	"	1½		50		75	157
	" sheet asbestos, boiler joints	"	1¼		20		25	158
	" lamp-wick, del. eng	balls,	1				05	159
	" hand-hole gaskets, del. eng	pc.	7		15	1	05	160
	" brass pipe, pump	lbs.	6		32	1	92	161
	" copper pipe, exhaust pipe	"	8		45	3	60	162
	" " rivets, " "	"	½		50		25	163
	" rep'g & testing safety valve					6	00	164
	" Roman cement, boiler & ash-pan						96	165
	" red paint	"	3		12		36	166
	" boiled oil, del. eng	qts.	1				15	167
	" sal-soda/ " "	lbs.	13		2		26	168
	" waste, " fireman	"	3		10		30	169
	" black varnish, del. fireman	"	11		15	1	65	170
	" dog chain, " "	ft.	12		6		72	171
	" case hard nuts, cut off	pc.	2		10		20	172
	" steel-spring wire, spring for whistle						09	173
	" 1 elbow, 3½, 2.50; 1 nipple, ¾, .11; 1 lock-nut, ¾, .02			2 28				174
	" 3 gauge cocks, ½, 1.40			4 20				175
				6 48				
	Less 45 %			2 92	176			
						3	56	
	" 4 1/2 ft. ¾" pipe, 7			29				177
	Less 20 %			06	178			
							23	
	" 1 glass water gauge			6 50				179
	Less 40 %			2 60	180			
						3	90	
	" use of blocks	tides,	1			3	00	181
	" mach. labor—fitting up crank shaft; chipping, filing, & fitting pinch-wheel to crank shaft; filing & fit-							

		ting keys to do.; fitting & shrinking new coupling on crank shaft & keying do.; scraping, filing, & fitting new main boxes to crank shaft; babbitting & filling & fitting crank-pin box; filing & fitting up link; fitting liners, pins, & bushing to do. & taking up lost motion in do.; fitting up ecc. rods; fitting new pins & keys to do.; closing con. rod straps; filing & fitting gibs & key to do.; drilling flange; fitting up eccentric rods; fitting new pins & keys to do.; grinding & fitting up plug cock; fitting up spring for whistle; fitting nut & bushing for pump; fitting new brass sleeve on pump rod & fitting pin to ecc. to work pump; fitting up eccentricities & straps; grinding & fitting up check-valve & new seats for do.; filing & fitting new propellor key; drilling grate bars, cutting pipe, & fitting & cutting bolts ..... hrs.		$207\frac{3}{4}$	40	83 10	182
		For math. labor—lathe, planer, spliner, & drill on do. ..... "		194	50	97 00	183
		" math. labor, on board ..... "		144	40	57 60	184
		" running eng. extra ..... "		$\frac{1}{2}$	2 00	1 00	185
		" smith labor—forging band & rep'g strap for tiller, propellor key, coupling key, eccentric key, closing con. rod strap & rep'g gibs & pins for link & ecc. nut for pillow-block stud & rep'g hook ..... "		$25\frac{3}{4}$	40	10 30	186
		" boiler labor—shearing, flanging, & furnishing patches & flange ..... "		9	35	3 15	187
		" boiler labor, on board ..... "		102	"	35 70	188
		" pattern " crank-pin box, brasshings, & levers ..... "		$11\frac{1}{2}$	45	5 18	189
		" coppersmith labor, rep'g exhaust pipe "		6	40	2 40	190
April	30.	For red paints, del. fireman ..... lbs.		$8\frac{1}{2}$	12	1 02	191
May	31.	" Norway iron studs		..	..	06	192
		" nuts do.		..	..	04	193
		" teaming grate bars to str.		..	..	25	194
		" mach. labor—lathe, turning & cutting studs ..... hrs.		2	50	1 00	195
June	30.	" 1 syphon		..	..	3 00	196
July	31.	" Norway iron forgings, add. to main valve stem ..... lbs.		3	6	18	197
		" plate-steel grate lug ..... "		9	8	72	198
		" cast " liner for nut for main valve stem ..... "		$\frac{1}{2}$	20	10	199
		" bolts & nuts do. & grate lug ..... pc.		6	..	32	200
		" washers, grate lug ..... lbs.		$\frac{1}{4}$	08	02	201
		" usudurian packing, del. eng. ..... "		$5\frac{1}{2}$	80	4 20	202
		" plumbago, do. ..... "		1	..	50	203
		" 1 elbow, $\frac{1}{2}$ 09					204
		Less 50 % 04	205				
					..	05	
		" 1 Jenk. valve, $1\frac{1}{4}$ 4 00					206
		Less 40 % 1 60	207				
					..	2 40	
		" $2\frac{1}{2}$ ft. $\frac{1}{2}$" pipe, 5 11					208
		Less 40 % 04	209				
					..	07	

		"	mach. labor—fitting up main valve stem, fitting nut & liner to do. & cutting pipe ..... hrs.			8½	40	3	40	210
		"	mach. labor, lathe & drill on do. ... "			5½	50	2	75	211
		"	" " " on board ..... "			27	40	10	80	212
		"	running engine, extra..... "			1	..	2	00	213
		"	smith labor—grate lug, rep'g & forging addition to main valve stem... "			5	40	2	00	214
		"	boiler labor, on board..... "			10	35	3	50	215
Aug.	31.	"	hand-hole gaskets, pr. eng.....pc.			5	15		75	216
		"	fusible plug, do. ..... "			1	..		50	217
Oct.	31.	"	grate bars..... .....lbs.			256	2½	6	40	218
		"	plate iron, grate lug..... "			14	5		70	219
		"	smith labor, rep'g fire-tools.....hrs.			1½	40		60	220
		"	boiler " on board ..... "			21½	35	7	53	221
		"	pattern " grate bars..... "			5½	45	2	48	222
Nov.	30.	"	red paint.....lbs.			8	12		96	223
		"	2 lock-nuts, ⅞, 7..... 14							
			Less 50 %..... 07	225						
						..	..		07	224
			For $6\frac{1}{2}$ ft. ¾″ pipe, 7..... 44							226
			Less 40 %..... 18	227						
						..	..		26	
		"	mach. labor, cutting pipe.....hrs.			½	40		20	228
Dec.	31.	"	iron forgings—bar & bolts for house straps for sea-cock, clamp for thrust, grate-bar lugs, strap for belt, head bolts for chocks, & blunt for hull..lbs.			149	4	5	96	229
		"	steel—set-screws for thrust, collar & key for cut-off..... "			2	8		16	230
		"	soft patch-iron, boiler repairs.. .... "			4	"		32	231
		"	sheet iron, ash-pan..... "			41	5	2	05	232
		"	bolts & nuts—boiler & sea-cock, house croton valve, thrust & del. fireman.....pc.			71	..	5	65	233
		"	steel set-screws, thrust ..... "			4	..		28	234
		"	lag screws, sea-cock..... "			8	..		76	235
		"	nuts, bitts..... .....lbs.			1½	16		24	236
		"	washers—boiler, sea-cock, croton valve & del. fireman ..... "			5	8		40	237
		"	sheet lead, boiler..... "			3½	8		28	238
		"	brass pipe, syphon..... "			16	32	5	12	239
		"	cement, sea-cock..... "			3	15		45	240
		"	hand-hole gaskets, boiler.....pc.			6	"		90	241
		"	hand lamps..... "			2	20		40	242
		"	red paint, boiler..... .....lbs.			3	12		36	243
		"	manhole gaskets, boiler .....pc.			1	..		70	244
		"	solder, syphon..... .....lbs.			3½	30	1	05	245
		"	1 union, 2, .80; 1 nipple, 2, .35; 2 do., 1½, .20, .40..... 1 55	246						
		"	1 union, 1¼, .46; 1 elbow, 1, .22; 1 bushing, 1½, .17 85	247		5	3		4	2¼
		"	1 coupling, ½, .21; 1 lock-nut, 1¼, .10; 1 br. coupling, 1, .35 66	248						
		"	1 br. union, 1, 1.40; 1 do. do., 1¼, 1.90; 2 br. nipples, ½, .35, .70..... 4 00	249						
			7 06							
			Less 50 %..... 3 53	250						
						..	..	3	53	
		"	$4\frac{1}{2}$ ft. 1¼ pipe, .12½ 53							251
			Less 40 %..... 21	252						
						..	..		32	
		"	3 ft. 6½ pipe, .22..... 66							253
			Less 50 %..... 33	254						
						..	..		33	

		For 1 Jenkins valve, 1¼		4 90				255
		Less 40 %		1 60	256			
							2 40	
	"	plumber's labor, on board	hrs.		5	40	2 00	257
	"	use of blocks	tides.		1		3 00	258
	"	" " hydrant, filling boiler	hrs.		⅔	5 00	2 08	259
	"	mach. labor—fitting up thrust collar & straps, belt-head, braces, & caps; filing & fitting key to cut-off indicator stand; grinding & fitting up valve; rep'g check-valve; cutting pipe & fittings for syphon; cutting set-screw & bolts	"		16¼	40	6 50	260
	"	mach. labor—lathe, planer, & drill on do.	"		11	50	5 50	261
	"	mach. labor, on board	"		156	40	62 40	262
	"	smith " set-screws & key bolts for chocks & hull, strap for bitt-head, grate-bar lug clamp for thrust straps for sea-cock bar, & bolt for house & bending pipe	"		37½	"	14 90	263
	"	boiler labor, patch for boiler	"		1	35	35	264
	"	" " " on board	"		74	35	25 90	265
1889.								
Jan.	21.	" soft patch-iron, boiler repairs	lbs.		63	8	5 04	266
		" sheet lead, do.	"		10½	8	84	267
		" cement, do.	"		19	15	2 85	268
		" bolts & nuts, do.	pc.		53	..	3 88	269
		" washers, do.	lbs.		6	8	48	270
		" white lead, do.	"		1	"	08	271
		" lamp-wick, do.	balls,		1	..	05	272
		" nuts, do.	lbs.		1	..	16	273
		" hand-hole gaskets, do.	pc.		6	15	90	274
		" Norway iron forgings, socket balls, do	lbs.		2	6	12	275
		" black varnish, del. fireman	"		10	15	1 50	276
		" plumbago, do.	"		½	50	25	277
		" 1 steam gauge cock			..	..	1 00	278
		" 1 tee, ½, .09; 1 bushing, ½, .06; 1 lock-nut, 1, .08		23				279
		" 1 nipple, ½		07				280
				30				
		Less 50 %		15	281			
							15	
		" Am. union, 1"		36				282
		Less 20 %		07	283			
							29	
		" 2 ft. 1" pipe, 9½		19				284
		Less 40 %		08	285			
							11	
	"	mach. labor, cutting bolt for boiler & pipe	hrs.		1	..	40	286
	"	smith labor, bolts for boiler	"		2	40	80	287
	"	boiler " shearing, flanging, & punching patches & grate lugs for boiler	"		19	35	6 65	288
	"	boiler labor, on board	"		135	"	47 25	289
	"	pattern " maple liners	"		½	45	23	290
Feb.	28.	" 1 glo. valve, 1, 1.80; 1 air-cock, ¾, .40		2 20				291
		Less 50 %		1 10	292			
							1 10	
	"	mach. labor, rep'g cock	hrs.		½	40	20	293
April	30.	" felt, del. eng	sq. ft.		4	4½	18	294
		" case hard nuts, del. eng	pc.		3	10	30	295
		" Norway iron, studs D	lbs.		1	..	06	296

		" mach. labor, lathe, turning & cutting studs	hrs.	1	..		50	297
		" smith labor, rep'g pump-rod	"	1	..		40	298
May	31.	" grate bars	lbs.	200	2½	5	00	299
		" teaming		..	..		30	300
June	29.	" Platt steel, propellor patcher & cyl. lagging	"	196	5	9	80	301
		" soft patch-iron, boiler repairs	"	3	8		24	302
		" iron forgings—bolts for hull, ring & staples for coal-scuttle covers	"	19	4		76	303
		" Norway do., do., rivets for propellor patches & bolts for boiler	"	29	6	1	74	304
		" iron castings, coal-scuttle covers	"	50	13½	1	75	305
		" bolts & nuts—boiler, hull, cylinder lagging, & del. fireman	pc.	49	..	1	55	306
		" washers—boiler, hull, del. eng. & fireman	lbs.	3	8		24	307
		" nuts, boiler	"	½	16		08	308
		" cement, " propellor	"	21	15	3	15	309
		" Roman do., "		..	..		30	310
		" red paint, " "	"	7	12		84	311
		" Russia iron, steam chest	"	4	15		60	312
		" usudurian pack-ng, boiler joints & del. eng	"	5	80	4	00	313
		" copper-wire gauze, do	sq. ft.	1	..		75	314
		" brass pipe, syphon & blow-pipe	lbs.	6½	32	2	08	315
		" " tube, oil-pipe	ft.	2	30		60	316
		" mach. screws, cylinder lagging & del. eng		..	..		15	317
		" Tupper's packing, del. eng	lbs.	4	80	3	20	318
		" copper wire, "	"	1½	35		53	319
		" asbestos lamp-wick, "	balls,	1	..		25	320
		" 1 lubricator, 3.75; 3 gauge cocks, ¼, 1.40, 4.20	7 95					321
		" 5 br. lock-nut-, ¾, .20, 1.00; 2 do., 1¼, .40, .80	1 80					322
		" 2 elbows, ¼, 9, .18; 1 plug, ¼, .04; 1 nipple, 1, .15; 3 do., ½, .10, .30	67					323
		" 2 couplings, ¾, .10, .20; 1 do., 1, .13; 1 do., 1¼, .17	50					324
		" 1 lock-nut, ¾, .07	07					325
			10 99					
		Less 50 %	5 49	326			5	50
		" 10 ft. 1¼ pipe, .12½, 1.25; 4 ft. ¾ pipe, 7, .28	1 53					327
		Less 40 %	61	328			92	
		" use of blocks	tides,	3	3 00	9	00	329
		" mach. labor—fitting rings & staples in coal scuttle; cutting bolts for hull & boiler; moving propellor; cutting rud.; rep'g oil-cup; cutting & fitting pipe & fittings	hrs.	26¼	40	10	70	330
		" mach. labor, on board	"	70	"	28	00	331
		" " " drill, drilling coal-scuttles	"	½	50		25	332
		" smith labor—rivets for propellor patches; tube rod; bolts for hull & boiler rings & staple for coal-scuttle; rep'g lantern-holder & guard-irons	"	15	40	6	00	333
		" boiler labor—shearing & punching patches for propellor; fitting & riveting on do.; punching guard-irons	"	66½	35	23	28	334

		" boiler labor, on board	"	17		"	5 95	335
		" carpenter labor, cylinder lagging	"	2		35	70	336
July	31.	" Norway iron, studs for steam chest	lbs.	¼		6	03	337
		" usudurian packing, del. eng	"	4½		80	3 60	338
		" rubber " do.	"	1½		45	68	339
		" 1 glo. valve, ¾, 1.35; 1 tee, ½, .09.	1 44					340
		Less 50 %	72	341				
							72	
		" mach. labor—rep'g & fitting up oil-cup; facing valve; cutting pipe; cutting & fitting studs for steam chest	hrs.	5		40	2 00	342
		" mach. labor, lathe, do	"	1½		50	75	343
		" " " on board	"	5		40	2 00	344
Aug.	31.	" red paint	lbs.	4		12	48	345
		" fusible plug	pc.	1		..	50	346
		" plumbago	lbs.	1		..	50	347
		" bolts & nuts		..		..	20	348
		" 4 ft. 1¼ pipe, .12½	50					349
		Less 40 %	20	350				
					..	..	30	
		" mach. labor, cutting studs & pipe	hrs.	2		40	80	351
		" " " on board	"	1		"	40	352
Sept.	30.	" copper pipe, blow-off	lbs.	8		40	3 20	353
		" bolts & nuts, do	pc.	4		..	20	354
		" rubber packing, do	lbs.	¼		45	11	355
		" manhole gasket, boiler	pc.	1		..	70	356
		" solder, oil-pipe	lbs.	½		25	13	357
		" 2 flanges, 5", .36, .72; 1 br. nipple, 1¼, 1.25	1 97					358
		Less 50 %	98	359				
					..	..	99	
		" grate bars	"	294		2½	7 35	360
		" mach. labor—fitting up flanges, grate bars, & rep'g oil-cup	"	2		40	80	361
		" mach. labor, lathe & drill, do	"	2		50	1 00	362
		" " " on board	"	29		40	11 60	363
Nov.	30.	" 1 patent steam syphon	15 00					364
		Less 10 %	1 50	365				
					..	..	13 50	
		" 5 ft. 1¼ pipe, .14	70					366
		Less 40 %	28	367				
					..	..	42	
		" 1 br. union, 1¼, 1.90; 1 angle valve, 1½, 3.90	5 80					368
		Less 50 %	2 90	369				
					..	..	2 90	
		" Tuck's packing, del. eng	lbs.	¾		64	48	370
		" anti-friction, do.	"	½		50	25	371
		" bolts & nuts, do.	pc.	14		7	98	372
		" emery cloth, do.	sh.	6		5	30	373
		" white lead, do.	lbs.	1		..	08	374
		" usudurian packing, boiler	"	½		80	40	375
		" copper-wire gauze, do.	sq. ft.	1¼		75	94	376
		" mach. labor, fitting pin in valve stem & facing valve	hrs.	1¼		40	50	377
		" mach. labor, lathe & drill, do	"	1½		50	75	378
		" " " on board	"	19		40	7 60	379
Dec.	31.	" comp. castings, deck plate & check-valves for pump	lbs.	4		34	1 36	380
		" iron casting, hand-wheel for valve		..		..	05	381
		" lead pipe, tank	"	19		8	1 52	382
		" solder, do.	"	1½		25	38	383
		" bolts & nuts & washers, del. eng		..		..	23	384
		" copper-wire gauze, do.	sq. ft.	½		75	38	385
		" white rubber packing, do.	lbs.	¾		"	56	386

	" plate-steel flange	"	2	5	10	387
	" 1 br. union, 2, 4.00; 1 br. nipple, ¾, .45		4 45			388
	" 3 nipples, ¾, .11, .33; 1 elbow, ¾, .15; 1 plug, ½, .04		52			389
			4 97			
	Less 50 %.		2 48	390		
			..	..	2 49	
	" mach. labor—fitting up check-valves, deck plate, & fitting hand-wheel to oil-cup	hrs.	3	40	1 20	391
	" mach. labor, lathe, do.	"	4	50	2 00	392
	" " " on board	"	22	40	8 80	393
	" smith " rep'g wheel rod	"	2	"	80	394
	" boiler " flange	"	½	35	18	395
	" pattern " check-valves	"	1	45	45	396
1890.						
Jan. 31.	" grate bars,	lbs.	215	2½	5 37	397
	" plate-steel grate lugs	"	22	5	1 10	398
	" bolts & nuts, do.		..	..	22	399
	" 1 Jenkins valve, del. eng		4 00			400
	Less 40 %.		1 60	401		
			..	..	2 40	
	" rubber packing, do.	lbs.	5	45	2 25	402
	" boiler labor, on board	hrs.	10	40	4 00	403
March 31.	" iron castings, boiler supports bit-cap & door linings	lbs.	302	3½	10 57	404
	" comp. do., bushing & ring for pump, guide for valve, stem & nuts do.	"	11½	34	3 91	405
	" soft patch-steel, boiler repairs	"	172	8	13 76	406
	" plate & sheet iron " grate lugs and ash-pan	"	184	5	9 20	407
	" sheet lead, boiler repairs	"	81	8	6 48	408
	" rivets, boiler repairs	lbs.	6	5	30	409
	" socket bolts, do.	"	12	9	1 08	410
	" bolts & nuts, do., & surface blow	pc.	192	..	17 67	411
	" nuts, do., & bit-cap	lbs.	4½	16	72	412
	" washers, do., & surface blow & cleats	"	9¾	8	78	413
	" lag screws, do., & braces	pc.	6	..	36	414
	" cement, do., & del. eng	lbs.	108	15	16 20	415
	" white lead, do.	"	2	8	16	416
	" lamp-wick, do.	balls,	3	5	15	417
	" copper wire, do.	lbs.	¾	35	27	418
	" Port. cement & fire-clay, do.		..	..	2 48	419
	" iron forgings, bolts for bit-cap & add. to pump plunger	"	21	4	84	420
	" Norway do. do., studs for throttle & socket bolts for boiler	"	9	6	54	421
	" boiled oil, del. eng	gals.	½	75	38	422
	" lamp-black, do.	lbs.	1	..	18	423
	" case hard nuts, throttle	pc.	2	15	30	424
	" sheet brass, pump, & oil-cup bracket	lbs.	1	..	32	425
	" hand-hole gaskets, boiler	pc.	5	15	75	426
	" red paint, del. eng	lbs.	4½	12	54	427
	" gauze glasses, do.	pc.	2	33	66	428
	" file, do.	"	1	..	33	429
	" pattern stock, boiler support, & bit-cap	ft.	6	9	54	430
	" lignumvitæ gibbs	lbs.	3	9	27	431
	" gauge cocks	pc.	3	1 50	4 50	432
	" 5 ft. 1½ pipe, .23		1 15			433
	" 1 coupling, ¾, .10; 1 do., 1¼, .17; 1 elbow, 1½, .38		65			434

	" 2 do., 1¾, .32, .64; 1 do., 1.22; 2 nipples, 1¼, .20, .40	1 26							435
		3 06							
	Less 50%	1 53	436				1 53		
	" 8 ft. 1¼ pipe, .14	1 12							437
	" 2½ " ¾ " 7½	16							438
		1 28							
	Less 35%	45	439				83		
	" mach. labor—fitting up pump-plunger gland, bushing guide for valve stem, & nuts for pump, fitting up bit-cap, fitting up furnace doors, cutting & fitting studs, grinding & fitting up valves, fitting up gib's, rep'g whistle pipe & valve, rep'g oil-cup & fitting up bracket for do., cutting bolts, cutting pipe, & fittings, etc	hrs.	36	40	14	40			440
	For mach. labor—lathe, drill, & spliner, do	"	35	50	17	50			441
	" mach. labor, on board	"	45	40	18	00			442
	" smith " rep'g & put. addition to pump plunger, bolts for bit-head, socket bolts for boiler, studs, & washers	"	12¾	40	5	10			443
	" boiler labor—shearing, flanging, & punching patches	"	87	"	34	80			444
	" boiler labor, on board	"	324½	"	129	86			445
	" pattern " boiler supports, bit-cap, & gib's	"	10½	45	4	73			446
April 30.	" bolts & nuts, del. eng	pc.	3			31			447
	" Tuck's packing do	lbs.	½	64		32			448
	" 1 plug, 1¼, .13; 1 do., 1¼, .10		23						449
	Less 50%	11	450				12		
May 31.	" comp. castings, check-valves for pump	lbs.	1			34			451
	" iron forgings, bolts for hull-guards	"	29	4	1	16			452
	" red paint, del. eng	"	7	12		84			453
	" 1 Jenkins glo. valve, 1½, del. eng.		5 50						454
	Less 40%		2 20	455			3 30		
	" Tuck's packing, del. eng	"	1¼	64		80			456
	" anti-friction packing, del. eng	"	½	50		25			457
	" bolts & nuts, heater	pc.	1			09			458
	" 1 union, 1¼, .46; 1 do., 1, .34; 1 nipple, 1¼, .20		1 00						459
	Less 50%		50	460			50		
	" use of blocks	tides,	1			3	00		461
	" mach. labor—lathe, check-valves	hrs.	2	50	1	00			462
	" " " on board	"	7	40	2	80			463
	" smith labor—rep'g fire-tools, guard-irons, & making bolts for do	"	7	"	2	80			464
June 30.	" syphon	pc.	1		3	00			465
	" iron forgings, eyebolts	lbs.	8	4		32			466
	" George glasses	pc.	6	27	1	62			467
	" clinch rings					06			468
	" 1 br. lock-nut, 1¼		40						469
	Less 50%		20	470			20		

		" mach. labor, cutting eyebolts & pipe	hrs.	1	..		40		471
		" smith labor, eyebolts	"	2	40		80		472
July	31.	" black varnish, del. eng	lbs.	10	15	1	50		473
		" copper wire, "	"	1¼	35		44		474
		" 1 br. union, 1¼, 1.90; 1¼ space nipple, .90; 1 glo. valve, 2.80		5 60					475
		Less 50 %		2 80	476				
				..	..		2 80		
		" mach. labor, on board	hrs.	10	40		4 00		477
Aug.	30.	" patch bolts & nuts, boiler	pc.	9	..		44		478
		" washers, drains & boiler	lbs.	3	8		24		479
		" cement, engine	"	5	15		75		480
		" manhole gasket, boiler	pc.	1	..		75		481
		" nuts, do.	lbs.	1½	16		24		482
		" fusible plug, del. eng	pc.	1	..		50		483
		" Tuck's packing, del. eng	lbs.	2¼	64	1	60		484
		" cement, do.	"	4½	15		68		485
		" sheet lead, do.	"	7	8		56		486
		" Norway iron forgings, rivets for propellor	"	3	6		18		487
		" solder, exhaust pipe	"	5	25	1	25		488
		" coppersmith labor, do	hrs.	8	40	3	20		489
		" 2 brass unions, 1″, 1.40, 2.80; 2 do., ¾, 1.00, 2.00		4 80	490				
		" 1 br. nipple, 1¼, .90; 1 do., 1, .80; 1 elbow, 1¼, .32		2 02	491				
		" 1 br. lock-nut, ¾, .20; 1 do., 1″, .25		45	492				
				7 27					
		Less 50 %		3 63	493				
				..	..		3 64		
		" 6 ft. gal. pipe, 1″ ⅛, .18½		1 11					494
		" 1 " " " 1, 13½		14					495
				1 25					
		Less 30 %		38	496				
				..	..		87		
		" 4 ft. ¾ gal. pipe, 7½		30					497
		Less 40 %		12	498				
				..	..		18		
		" mach. labor, cutting pipe & fittings	hrs.	2	40		80		499
		" " " on board	"	17½	"	7	00		500
		" smith labor, rivets for propellor patches	"	1½	"		60		501
		" boiler labor, on board	"	14	"	5	60		502
Sept.	30.	" Babbitt metal, con. rod box	"	7	45	3	15		503
		" brass pipe, heaters	lbs.	3	32		96		504
		" 5 ft. ¾″ pipe, 7½, heaters		38					505
		Less 40 %		15	506				
				..	..		23		
		" 1 br. elbow, ¾, 60, .60; 1 br. lock-nut, ¾, .20		80					507
		Less 50 %		40	508				
				..	..		40		
		" mach. labor—babbitting & fitting up con. rod box, rep'g oil-cup, cutting & fitting pipe	hrs.	12	40	4	80		509
		" mach. labor, lathe do.	"	2	50	1	00		510
		" " " on board	"	14	40	5	60		511
		" smith labor, rep'g fire-tools	"	1½	"		60		512
		" use of patent crank-pin tool		..	..	5	00		513
Oct.	31.	" comp. castings, check-valves	lbs.	4	34	1	36		514

	" iron forgings, eyes & brackets for house & stack	"		23	4		92	515
	" turn-buckles, do.	pc.		4	75	3	00	516
	" lag screws, do.	"		8	5		40	517
	" nuts & washers, do.	"					18	518
	" 1 br. nipple, $1\frac{1}{2}$", 1.25; 1 br. nipple, $1\frac{1}{2}$", 2.75		4 00					519
	" 1 bushing, $1\frac{1}{2}$", .17; 1 br. coupling, $\frac{3}{4}$", .30		47					520
	" $1\frac{5}{12}$ ft. $1\frac{1}{2}$" pipe, .23		35					521
			4 82					
	Less 50 %		2 41	522				
	" $4\frac{5}{12}$ ft. $1\frac{1}{2}$ galv. pipe, .26		1 17				2 41	
	Less 40 %		47	524				523
	" mach. labor, fitting up check-valves & brackets	hrs.		2	40		80	525
	" mach. labor, lathe & drill, do	"		$6\frac{1}{2}$	50	3	25	526
	" " " on board	"		27	40	10	80	527
	" smith " brackets & eyes	"		$6\frac{1}{2}$	"	2	60	528
	" boiler " on board	"		9	"	3	60	529
Nov. 30.	" iron forgings, bolts for guards	lbs.		5	4		20	530
	" sheet lead, stock	"		10	8		80	531
	" bolts & nuts, do.	pc.		30	"	1	48	532
	" washers, do.	lbs.		1	"		08	533
	" Muntz metal valve stem	"		$\frac{1}{2}$	40		20	534
	" copper wire, whistle	"		$1\frac{1}{4}$	35		44	535
	" lamp-wick, del. eng.	balls,		6	5		30	536
	" solder, copper pipe	lbs.		9	25	2	25	537
	" coppersmith labor, do.	hrs.		8	40	3	20	538
	" 1 br. union, $1\frac{1}{4}$, 1.90; 1 galv. coupling, $1\frac{1}{4}$, .25		2 15					539
	Less 50 %		1 07	540				
	" 4 ft. $\frac{1}{4}$ pipe, 4, .16; 2 ft. $1\frac{1}{4}$, 14, .28		44				1 08	
	Less 40 %		18	542				541
	" $1\frac{5}{12}$ ft. $1\frac{1}{4}$ galv. pipe, $18\frac{1}{2}$		37				26	
	Less 30 %		11	544				543
	" mach. labor—filing & fitting up valve, valve-stem nut, & cutting pipe	hrs.		$2\frac{1}{2}$	40	1	00	545
	" mach. labor, lathe D	"		$3\frac{1}{2}$	50	1	75	546
	" " " on board	"		5	40	2	00	547
	" smith " bolts for guards & bending pipe	"		3	"	1	20	548
	" boiler labor, on board	"		29	"	11	60	549
Dec. 31	" grate bars	lbs.		207	$2\frac{1}{2}$	5	18	550
	" 2 ft. $\frac{1}{2}$ pipe, $5\frac{1}{2}$		11					551
	Less 40 %		04	552				
	" mach. labor, cutting pipe	hrs.		$\frac{1}{2}$	40		07	
1891.							20	553
Jan. 31.	" bolts & nuts, boiler	pc.		1	"		10	554
	" cement, do.	"		3	15		45	555
	" copper-wire gauze, do.						38	556
	" mach. labor, fitting up pipe	hrs.		1	"		40	557
						2,159	08	

Cr.

1887.					
July 31.	By junk		2 46		558
Aug. 31.	" "		12		559

1888.					
Jan'y 20.	"	cash	150 00		560
Mar. 1.	"	"	150 00		561
April 17.	"	"	100 00		562
Sept. 10.	"	"	302 86		563
1889.					
April 1.	"	towing	5 00		564
May 1.	"	"	15 00		565
1890.					
Jan'y 31.	"	"	10 00		566
Feb'y 3.	"	"	9 00		567
" 8.	"	"	5 00		567*a*
Sept. 30.	"	"	9 00		568
Dec. 30.	"	"	5 00		569
				763 44	
				$1,395 64	

11 This petition was filed on the twenty-second day of October, A. D. 1891, and was entered in this court during the October sitting thereof, in said year; and thereupon, by order of court, the following process was issued:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss.*:

To the sheriffs of our several counties or their deputies, [L. S.] Greeting:

We command you to attach a certain steam vessel or tugboat called the Glide, now in the port or harbor of Boston, in said county, with all her tackle, apparel, and furniture, and summon Jonathan Chase, John Morrison, Henry R. Lawler, Helena H. Chase, and Mark A. Kearns, all of said Boston (if they may be found in your precinct), to appear before our justices of our superior court, to be holden at Boston, within and for our said county of Suffolk, on the first Monday of December next, then and there, in our said court, to answer unto the petition of the Atlantic Works, a corporation duly established, doing business in said Boston, a copy of which is hereto annexed.

SUFFOLK, *ss.*:

Superior Court.

THE ATLANTIC WORKS }
v.
TUG "GLIDE" and OWNERS. }

BOSTON, *October 19th*, 1891.

12 The petition of the (sic) The Atlantic Works respectfully shows that it is a corporation duly established under the laws of the Commonwealth of Massachusetts and having its usual place of business in said Boston, in said Commonwealth, and that Alfred E. Cox, of Malden, Middlesex county and said Commonwealth, is its treasurer; that by virtue of a contract with Jonathan Chase, of said Boston, the said The Atlantic Works did, at various times be-

tween July 20th, 1887, and February 1st, 1891, perform and furnish labor and furnish and use materials in the repairs of a certain steam vessel called the "Glide," said "Glide" being a tugboat owned by said Jonathan Chase, together with John Morrison, Henry R. Lawler, Helena H. Chase, and Mark A. Kearns, all of said Boston, so far as known to the petitioner; that said "Glide" belongs to the port of Boston, at which port she was when labor and materials were furnished, performed, and used as aforesaid; that the amount due for said labor and material-, after deducting all just credits, is thirteen hundred ninety-five $\frac{64}{100}$ dollars, according to the account annexed to the original petition on file, and interest from February 1st, 1891, when, or about when, demand of payment was made; that said labor consisted of machine, boiler, smith, pattern, draughting, and coppersmith labor and use of tools; that said materials com-
prised castings, forgings, and other metals; that the peti-
13 tioner, pursuant to "Public Statutes of Massachusetts," chapter 192, and conformably to the provisions thereof, duly filed a sworn statement in the office of the clerk of the city of Boston aforesaid.

Wherefore the petitioner prays that said vessel may be sold and the proceeds of the sale applied to the discharge of the demand, as hereinbefore set forth.

THE ATLANTIC WORKS.
ALFRED E. COX, *Treas'r.*

To the damage of the said pl'ff (as it says) the sum of twenty-five hundred dollars, which shall then and there be made to appear with other due damages; and have you there this writ with your doings therein.

Witness Albert Mason, Esquire, at Boston, the twenty-second day of October, in the year of our Lord one thousand eight hundred and ninety-one.

JOS. A. WILLARD, *Clerk.*

On which said process is the following:

Edward J. Jones, master in chancery, 61 Court street, Boston. Sec. 39, chap. 161, Public Statutes, attachment of vessels.

COMMONWEALTH OF MASSACHUSETTS, } *ss:*
Suffolk, }

BOSTON, *Oct. 26th, A. D.* 1891.

I, Alfred E. Cox, in behalf of the plaintiff named in the
14 annexed writ, on oath declare that said plaintiff has a good cause of action against the defendants named in said writ, to wit, Jonathan Chase, John Morrison, Henry R. Lawler, and Helena H. Chase, Mark A. Kearns, owners of the tugboat "Glide;" that it has reasonable expectation of recovering a sum amounting, exclusively of all costs, at least to one-third the damages demanded in the writ.

ALFRED E. COX.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss.*:

BOSTON, *Oct. 26th*, A. D. 1891.

Personally appeared the above-named Alfred E. Cox before me and made oath that the above affidavit by him subscribed is true, and I certify that, after due hearing, I am satisfied the same is true.

EDWARD J. JONES,
Master in Chancery.

Fee, $1.00.

Also on said process are the following returns by the officer who served the same:

SUFFOLK, *ss.*:

BOSTON, *October* 27, 1891.

By virtue of this writ I this day attached a certain steam vessel or tugboat called the "Glide," with all her tackle, apparel, and furniture, and placed a keeper in charge of the same. On the 23rd day of November, A. D. 1891, I summoned the within-named Jonathan Chase, John Morrison, and Mark A. Kearns each to appear and answer at court, as within directed, by leaving at the last and usual place of abode of each of them a summons, together with an attested copy of this writ.

Fees.

Attachment	1 00
Keeper	8 00
Service	1 50
Copies	7 00
Custody	42 00
Oath	75
Travel	72
H. & C.	96
To ret. day	$61 43

JOHN B. FITZPATRICK,
Deputy Sheriff.

SUFFOLK, *ss.*:

BOSTON, *November 23rd*, 1891.

I have made diligent search for the within-named Henry R. Lawler and Helena H. Chase and could not find them, and they having no last and usual place of abode, tenant, agent, or attorney duly accredited and known to me as such within this Commonwealth, I could make no service of this writ upon them.

JOHN B. FITZPATRICK,
Deputy Sheriff.

I certify that the expenses taxed in my return on this writ have been incurred, and that the same are reasonable.

JOHN B. FITZPATRICK,
Deputy Sheriff.

Sworn to before me—

GEO. L. WRIGHTON,
Justice of the Peace.

I hereby certify that it was necessary to use a horse and carriage in serving the within process, and that I actually used such conveyance — miles.

JOHN B. FITZPATRICK,
Deputy Sheriff.

16 And the petitioner appeared by Millett and Foster, Esquires, its attorneys.

And on the sixth day of November, in said year 1891, the following was filed:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss.:*

Superior Court.

ATLANTIC WORKS
vs.
TUG "GLIDE."

Motion to Dismiss.

And now comes Jonathan Chase *et al.*, part owners of tug "Glide," of Boston, and move that said petition be dismissed because of want of jurisdiction of this honorable court as to the subject-matter, inasmuch as the subject-matter is wholly within the jurisdiction of the United States court, being a matter of admiralty and maritime jurisdiction.

EUGENE P. CARVER,
Their Att'ys.

Appear for Jona. Chase, John Morrison, Henry R. Lawler, Helena H. Chase, M. A. Kearns; also Williamina D. Wildes, mortgagee.

17 And afterwards, during said sitting, to wit, on the seventh day of December, said process was returned into court; and on the eleventh day of said December the following was filed:

SUFFOLK, *ss*:

Superior Court, Dec. Sitting, 1891.

THE ATLANTIC WORKS, Pl'ff,
v.
TUG GLIDE & OWNER-, D'f't-.

In the above action we appear for John Morrison, one of the owners.

DANA B. GOVE & SONS.

Also, on said eleventh day of December, the following was filed:

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, *ss*:

Superior Court, December, 1891.

ATLANTIC WORKS
vs.
TUG "GLIDE."

Plea to the Jurisdiction.

18 And now comes Williamina D. Wildes, the holder and owner of a mortgage on eleven-sixteenths ($\frac{11}{16}$) of said tug "Glide," and denies that this honorable court has jurisdiction as against the tug "Glide" in the above-entitled action, because it is a proceeding *in rem* against said tug for repairs, and that the same is within the exclusive jurisdiction of the United States courts, conferred upon said courts by the Constitution and laws of the United States.

W. D. WILDES,
By CARVER & BLODGETT,
Her Attorneys.

And also, on the seventeenth day of said December, the following was filed:

SUFFOLK, *ss*:

Superior Court, December Sitting, 1891.

THE ATLANTIC WORKS, Pl'ff,
v.
JONATHAN CHASE & *al.*, D'f't-; TUGBOAT "GLIDE."

In the above action I appear for defendants Jonathan Chase, Helena M. Chase, Mark Kearns.

EDW. J. WELSH, *Att'y.*

19 Thence the same was continued to the January sitting, 1892, and on the fourth day of said January the said Jonathan Chase filed the following, to wit:

SUFFOLK, *ss*:

Superior Court, January Sitting, 1892.

THE ATLANTIC WORKS
vs.
JONATHAN CHASE & *al.*

Answer of Def't Jonathan Chase.

And now comes the def't Jonathan Chase & for answer says he denies each & every item & allegation in pl'ff's writ & declaration contained.

By his attorney, EDW. J. WELSH.

Also, on said fourth day of January, the said Helena M. Chase filed the following, to wit:

SUFFOLK, *ss*:

Superior Court, January Sitting, 1892.

THE ATLANTIC WORKS
vs.
TUG "GLIDE" & OWNERS.

Answer of Def't Helena M. Chase.

And now comes the defendant Helena M. Chase and for answer says she denies each & every item & allegation in the plaintiff's writ & declaration contained.

By her attorney, EDW. J. WELSH.

And also on said fourth day of January the said Mark A. Kearns filed the following, to wit:

SUFFOLK, *ss*:

Superior Court, January Sitting, 1892.

THE ATLANTIC WORKS
vs.
TUG "GLIDE" & OWNERS.

Answer of Def't Mark A. Kearns.

And now comes the def't Mark A. Kearns & for answer says he denies each & every item & allegation in plaintiff's writ & declaration contained.

By his attorney, EDW. J. WELSH.

And on said motion to dismiss, filed, as aforesaid, on said sixth day of November, 1891, the following order was indorsed, to wit:
'92, March, 10.—Allowed. Albert Mason, C. J. S. C.

21 And thereupon, on the fourteenth day of said March, the following was filed:

SUFFOLK, *ss*:

Superior Court.

ATLANTIC WORKS
v.
"GLIDE" & OWNERS.

The petitioner in the above-entitled case appeals from the order of said court dismissing said petition.

MILLETT & FOSTER,
Attorneys for Atlantic Works.

Thence the same was continued, to await the decision upon said appeal, from sitting to sitting, to the January sitting, 1893, when, on the fourth day of January last aforesaid, the supreme judicial court for the Commonwealth transmitted to this said superior court the following rescript, to wit:

22 COMMONWEALTH OF MASSACHUSETTS:

Supreme Judicial Court for the Commonwealth, at Boston, January, 1893.

In the case of—

THE ATLANTIC WORKS
vs.
TUG GLIDE & OWNERS.

pending in the superior court for the county of Suffolk:

Ordered that the clerk of said court, in said county, make the following entry under said case in the docket of said court, viz:

Motion to dismiss overruled.

By the court:

HENRY A. CLAPP, *Clerk.*

January 4, 1893.

Brief Statement of the Grounds and Reasons of the Decision.

The State court has jurisdiction of the proceedings under Pub. Sts., c. 192. See opinion. H.

And on the sixteenth day of January last aforesaid the following was filed:

23 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

Superior Court.

ATLANTIC WORKS
vs.
TUG "GLIDE."

Defendants' Answer.

And now come the defendants in the above-entitled case and, without waiving their motion to dismiss for want of jurisdiction, heretofore filed in this action, but insisting upon the same, make answer as follows:

First. The defendants deny each and every allegation in the plaintiff's petition and declaration contained.

Second. And the defendants, further answering, say that on March 20, May 1, June 4, & June 8, 1890, the said tug left the port of Boston and went to the port of Lynn.

That on June 11 & July 1, 1890, she went to the port of Weymouth, and that on November 26, 1890, she went to the port of Quincy.

That all of said dates were more than four (4) days prior to the filing of the lien here sued upon by the petitioners, and that
24 said dates are subsequent to most of the dates on which it is alleged in said petition that certain repairs were made and materials furnished to the said tug.

By their att'ys, CARVER & BLODGETT.

On the back of the last aforesaid written paper is the following, to wit:

Jan. 16, '93.—This may be filed. Millett & Foster, att'ys for pet'r.

And on the twenty-fifth day of said January, 1893, L. W. Howes, Esquire, was appointed auditor by the court.

Thereupon a rule to said auditor was issued in words and figures as follows, to wit:

Rule to Auditor.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

Superior Court, January Sitting, 1893.

ATLANTIC WORKS
vs.
TUG GLIDE & OWNERS.

And now it is ordered by the court that Lewis W. Howes, Esq., be, and he hereby is, appointed auditor in the above-men-

tioned action, to hear the parties and examine their vouchers and evidence and to state the accounts and make report thereof to the court.

JOS. A. WILLARD, *Clerk.*

And on the sixth day of February, 1893, the petitioner filed the following:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

Superior Court.

THE ATLANTIC WORKS
v.
TUG "GLIDE" *et* OWNERS

To the honorable the justices of said superior court:

Respectfully represents your petitioner that in the month of October, 1891, it brought a petition to enforce a lien upon said tug "Glide," which petition is now pending in said court; that immediately thereupon a process of attachment issued against said vessel, her tackle, apparel, and furniture; that thereupon said vessel was seized by the sheriff, who has ever since continued to hold said vessel under attachment; that said vessel is being held and preserved at great expense and its value is being greatly diminished, and that the laws of this Commonwealth do not provide for the sale of such vessel pending proceedings and before final judgment.

Wherefore your petitioner prays that an order or decree be made by the honorable the justices of said superior court enabling your petitioner to sell said vessel as and in the manner set forth in said order or decree, and all as speedily as may be.

THE ATLANTIC WORKS,
By its attorneys, MILLETT & FOSTER.

On the back of the last aforesaid written paper is the following order, to wit:

If the representation herein, that the laws of the Com'lth do not provide for sale of the vessel pending proceedings, be true, the court has no general power to order the sale.

If sects. 89 or 90 of chap. 161 can be held applicable, this motion is not made under their provisions, and under sect. 89 no action by the ct. would be necessary.

Motion disallowed without prejudice to motion under the statute if applicable.

ALBERT MASON, *C. J. S. C.*

And on the twenty-fifth day of said February, 1893, said rule was returned into court with the following return thereon by said auditor, viz:

27 Pursuant to the foregoing rule, and after due notice to the parties of the time and place for a hearing in said action, they met at my office, in Boston, for that purpose, and, after a full hearing of the evidence and arguments, I find and report as follows, to wit:

First. That the Atlantic Works was and is a corporation organized and existing under the laws of this Commonwealth and having a usual place of business in Boston, and that Alfred E. Cox was and is the treasurer of said corporation.

Second. That the tug "Glide" is owned as follows: Jonathan Chase, $\frac{22}{32}$; John Morrison, $\frac{2}{32}$; Henry R. Lawler, $\frac{3}{32}$; Helena H. Chase, $\frac{4}{32}$; Mark A. Kearns, $\frac{1}{32}$; and it is agreed, for the purposes of this case, that Wilhelmina D. Wildes is mortgagee of the $\frac{22}{32}$ owned by Jonathan Chase under a mortgage dated September 10th, 1888, and recorded in the custom-house at Boston, Book 125, p. 367, but there is no agreement as to the terms of said mortgage or amount due thereunder; that the home port of said tug "Glide" is Boston, and that she is engaged in the towing business.

That the Atlantic Works furnished the labor and materials used in the repairing of said tug, as set forth in the account which is annexed to the petition in this case.

28 That said labor and materials were furnished to the said tug "Glide," and the debt therefor contracted when she was in the port of Boston, and at the dates given in said account, and under and by virtue of a contract with said Jonathan Chase, who was then her captain and part owner, and that said repairs and materials were necessary and proper for said tug, and that statements of said account have been from time to time rendered to said Jonathan Chase during the years 1887 to 1891, and that certain payments have been made upon the same in accordance with the credit items in said account.

Third. That on February 17th, 1891, said Atlantic Works filed a statement of their claim of lien upon said tug "Glide" in the city clerk's office at Boston in manner and form in accordance with the Public Statutes, and that a statement of account was annexed to the same, identical with the one annexed to and filed with the petition in this court.

That in accordance with the aforesaid statutes a petition was filed by the Atlantic Works in the superior court in the county of Suffolk on October 22d, 1891.

That the total amount due to said Atlantic Works, after deducting all just credits, is thirteen hundred and ninety-five and $\frac{64}{100}$ dollars ($1,395.64) for labor and materials which were furnished

29 to the said tug "Glide" from July, 1887, to February, 1891.

That of the aforesaid amount one hundred and thirty and $\frac{86}{100}$ dollars ($130.86) were furnished after June 8th, 1890, and no part of these amounts have been paid.

Fourth. That the said steam-tug "Glide" on the 8th day of June, 1890, towed a schooner from Lynn bay to Lynn, Massachusetts.

That there is no public record at the custom-house or elsewhere of any clearing or entering or departure or arrival or sailing of said

tug "Glide," and that the Atlantic Works had no knowledge of said towage of said tug from Lynn bay to Lynn, and that for the purposes of this case it is agreed that the said tug "Glide" did not leave the port of Boston after June 9th, 1890, and before the filing of this petition.

I also find that said steam-tug having towed a schooner from Lynn bay to Lynn, Massachusetts, on the 8th of June, 1890, amounted to a departure from the port of Boston at that time within the meaning of the Public Statutes, chap. 192, sec. 15, and hence the lien cannot be maintained for the labor performed and materials furnished for and on account of said steam-tug prior to that date, but only for the labor and materials furnished after
30 that date; and so I find and report that this petition may be maintained for said sum of $130.86, and interest from said Feb. 17, 1891.

L. W. HOWES, *Auditor.*

And on said process the following order was indorsed, to wit:

SUFFOLK, *ss:*

MAR. 11, '93.

Lien established in favor of the Atlantic Works for the sum of $130.86, with interest from Feb. 17, 1891, viz., $147.03.

Sale ordered as provided in ch. 191.

DANIEL W. BOND, *J. S. C.*

Thereupon the defendants alleged exceptions to the ruling of the court in matters of law, and the same being reduced to writing, were presented to the court, and are as follows, to wit:

31 COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

Superior Court.

ATLANTIC WORKS
vs.
TUG "GLIDE."

Defendants' Bill of Exceptions.

This is a petition brought in the superior court under sections 14 and 15, chapter 192, of the Public Statutes of the Commonwealth of Massachusetts, it being a proceeding in its nature *in rem* against the tug "Glide."

The pleadings may be referred to.

The tug "Glide" was a vessel owned in Boston and engaged in towing vessels in and out of the harbor of Boston to the neighboring ports. The lien claimed under said statute was for labor and materials furnished in repairing said vessel by the petitioners at her home port. At the trial of the case in the superior court the

respondents asked the court to rule as follows: That, inasmuch as this was an action *in rem* against the tug "Glide," the superior court had no jurisdiction, the said statute being contrary to the Constitution of the United States, inasmuch as under the Constitution of the United States full admiralty jurisdiction was given to the
32 United States courts. But the court ruled that the superior court had jurisdiction; to which ruling the respondents duly excepted.

The court found for the petitioner, and directed a sale of the said tug "Glide" under the provisions of the statutes.

And now the respondents, being aggrieved by the aforesaid ruling of the court, present this their exception thereto and pray that the same may be allowed.

CARVER & BLODGETT,
Attorneys for Respondents.

Exceptions allowed.
DANIEL W. BOND, *J. S. C.*

On which exceptions is the following indorsement, to wit: Allowed & filed March 16, 1893. Attest: Daniel W. Bullard, ass't clerk.

And the questions of law thereby raised, to wit, by said bill of exceptions, were transmitted to said supreme judicial court for the Commonwealth for their determination.

Thence the cause was continued in this court to the present April sitting, 1893.

33 And now, on the seventeenth day of May, 1893, said supreme judicial court for the Commonwealth transmitted to the said superior court the following rescript, to wit:

COMMONWEALTH OF MASSACHUSETTS:

Supreme Judicial Court for the Commonwealth, at Boston, May, 1893.

In the case of—

ATLANTIC WORKS
vs.
TUG "GLIDE."

pending in the superior court for the county of Suffolk:

Ordered that the clerk of said court in said county make the following entry under said case in the docket of said court, viz:

Exceptions overruled.

By the court:

HENRY A. CLAPP, *Clerk.*

May 16, 1893.

Brief Statement of the Grounds and Reasons of the Decision.

The exception is disposed of by the former judgment in this court.

Whereupon, on the twenty-second day of said May, A. D. 1893, it is ordered and decreed by the court that said lien is established for the following sums, viz: The sum of one hundred
34 forty-eight dollars and sixty-three cents, debt or damage, and one hundred fifteen dollars and seventy-four cents, costs of suit, and a sale of the said vessel, her tackle, apparel, and furniture, ordered in the manner and form prescribed by law.

Warrant issued May twenty-fourth, 1893.

All and singular which premises we have held good by the tenor of these presents to be exemplified.

In testimony whereof we have caused the seal of our said superior court to be hereto affixed.

Witness Albert Mason, Esquire, chief justice of our said superior court, at Boston, in said county of Suffolk, this eighth day of September, in the year of our Lord one thousand eight hundred and ninety-three.

Seal of the Superior Court.

JOS. A. WILLARD, *Clerk.*

Endorsed on cover: Case No. 15,403. Massachusetts superior court. Term No., 276. The Tug "Glide" and Owners, plaintiffs in error, *vs.* The Atlantic Works. Filed September 28, 1893.

167-606

Office Supreme Court U. S.
FILED.
APR 23 18[illegible]
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1895.

No. [redacted] 39.

The Tug "GLIDE" and Owners,

Plaintiffs in Error,

vs.

THE ATLANTIC WORKS,

Defendant in Error.

BRIEF FOR PLAINTIFFS IN ERROR.

EUGENE P. CARVER,
EDWARD E. BLODGETT,
Of Counsel.

BOSTON:
CARL H. HEINTZEMANN, PRINTER,
234-36 CONGRESS STREET.
1896.

Supreme Court of the United States.

No. 276.

THE TUG "GLIDE" AND OWNERS,

Plaintiffs in Error,

v.

THE ATLANTIC WORKS.

Brief of Plaintiffs in Error.

STATEMENT OF FACTS.

This is a writ of error to the Superior Court of the Commonwealth of Massachusetts. The action to which this writ relates was commenced in the said Superior Court for the County of Suffolk on October 22d, 1891, by a petition filed by the Atlantic Works to enforce a lien against the tug Glide, for repairs furnished at her home port.

Record, pp. 4–5.

The Statute of Massachusetts authorizing the bringing of the action, and stating the remedy, is found in Public Statutes of Massachusetts, Chapter 192, Sections 14 to 19, inclusive, and is as follows: —

"*Section* 14: — When by virtue of a contract, expressed or implied, with the owners of a vessel, or with the agents, contractors, or sub-contractors of such owners, or with any of them, or with a person who has been employed to construct, repair, or launch a vessel, or to assist therein, money is due for labor performed, materials used, or labor and materials furnished in the construction, launching, or repairs of, or for constructing the launching ways for, or for provisions, stores, or other articles furnished for or on account of such vessel in this Commonwealth, the person to whom such money is due shall have a lien upon the vessel, her tackle, apparel, and furniture, to secure the payment of such debt, and such lien shall be preferred to all others on such vessel except

that for mariner's wages, and shall continue until the debt is satisfied.

"*Section* 15: — Such lien shall be dissolved unless the person claiming the same files, within four days from the time when the vessel departs from the port at which she was when the debt was contracted, in the office of the clerk of the city or town within which the vessel was at such time, a statement, subscribed and sworn to by him, or by some person in his behalf, giving a just and true account of the demand claimed to be due to him, with all just credits, and also the name of the person with whom the contract was made, the name of the owner of the vessel, if known, and the name of the vessel, or a description thereof sufficient for identification; which statement shall be recorded by such clerk in a book kept by him for that purpose, and for such recording the clerk shall receive the same fees as for recording mortgages of equal length.

"*Section* 16: — If the vessel is partly constructed in one place and partly in another, either place shall be deemed the port at which she was when the debt was contracted, within the meaning of this chapter; and the validity of the lien shall not be affected by any inaccuracy in the description of the vessel, if she can be recognized thereby, nor by any inaccuracy in stating the amount due for labor or materials, unless it appears that the person filing the statement has wilfully and knowingly claimed more than is due.

"*Section* 17: — Such lien may be enforced by petition to the Superior Court for the county where the vessel was at the time when the debt was contracted, or in which she is at the time of instituting proceedings. The petition may be entered in Court or filed in the clerk's office in vacation, or may be inserted in a writ of original summons with an order of attachment, and served, returned, and entered like other civil actions, and the subsequent proceedings for enforcing the lien shall, except as hereinafter provided, be as prescribed in Chapter 191, for enforcing liens on buildings and land, so far as the provisions of said chapter are applicable. At the time of entering or filing the petition, a process of attachment against such vessel, her tackle, apparel, and furniture, shall issue and continue in force, or may be dissolved like attachments in civil cases, but such dissolution shall not dissolve the lien.

"*Section* 18: — The petition shall contain a brief statement of the labor, materials, or work done or furnished, or of the stores, provisions, or other articles furnished, and of the amount due therefor, with a description of the vessel subject to the lien, and all other material facts and circumstances, and shall pray that the vessel may be sold and the proceeds of the sale applied to the discharge of the demand.

"*Section* 19: — Any number of persons having such liens upon the same vessel may join in a petition to enforce the same; and the same proceedings shall be had in regard to the respective rights of each petitioner, and the respondent may defend as to each petitioner, in the same manner as if they had severally petitioned for their individual liens."

Upon the filing of the petition in the State Court, in accordance with the statute and rules of Court, a writ of attachment was issued against the tug Glide, and on October 27, 1891, the tug was seized by the sheriff.

Record, p. 21.

On November 6, 1891, the owners of said tug Glide appeared by their attorney, and filed a motion to dismiss the said petition of the Atlantic Works, and the attachment process, on the ground that the Superior Court had no jurisdiction of the subject matter, or of the process issued; that the jurisdiction lay wholly and exclusively with the United States Court, being a matter of admiralty and maritime jurisdiction, and the remedy not being a common law remedy.

Record, p. 22.

On December 11, 1891, Wilhelmina D. Wildes, owner of a mortgage on 11-16 of said tug Glide, filed a plea denying the jurisdiction of the said Superior Court of Massachusetts, on the ground of the exclusive jurisdiction of the United States Court, of the subject matter, i. e., a proceeding *in rem* against the tug for repairs.

Record, p. 23.

A hearing was then held on this motion to dismiss, and on March 10, 1892, said motion was allowed by the Superior Court, and an order entered dismissing the petition.

Record, p. 24.

On March 14, 1892, the Atlantic Works appealed from the order dismissing said petition to the Supreme Judicial Court for the Commonwealth, and that Court, on January 4, 1893, by a majority opinion, reversed the decree of the Superior Court, and overruled the motion to dismiss, holding that the State Court had jurisdiction of the proceedings under Chapter 192 of the Public Statutes, in the following words : —

"ATLANTIC WORKS v. TUG GLIDE.

"Suffolk. May 31, 1892. January 4, 1893.

"Present: Field, C. J., Allen, Holmes, Knowlton, Morton, Lathrop, & Barker, JJ.

"Lien for Repairs on a vessel. Statute. Jurisdiction.

"A petition was brought under the Pub. Sts. c. 192, sect. 17, to enforce a lien given by section 14 of the same chapter, for repairs furnished a tug boat in her home port. A motion to dismiss for want of jurisdiction was allowed by the Superior Court. Held, that that Court had a right to exercise the jurisdiction which the statute purported to confer upon it. Morton and Knowlton, JJ., dissenting.

"Holmes, J. This is a petition under Pub. Sts. c. 192, sect. 17, to enforce a lien given by sect. 14 of the same chapter, for repairs furnished to a vessel — in this case a tug boat — in her home port. The respondents filed a motion to dismiss for want of jurisdiction, which was allowed by the Superior Court. The only question is whether the Superior Court has a right to exercise the jurisdiction which the statute purports to confer upon it.

"There is no doubt that, when the maritime law gives a lien and a proceeding *in rem*, a State statute cannot give the State courts concurrent jurisdiction, by professing to create a similar statutory lien. The attempt to do so would be contrary to U. S. Rev. Sts., sect. 563, cl. 8, and U. S. Rev. Sts., sect. 711, cl. 3; and the State law would be void. The Hine *v.* Trevor, 4 Wall. 555, 569. The Moses Taylor, 4 Wall. 411. The Belfast, 7 Wall. 624.

"Most of the later decisions and dicta go further, and deny the power of State statutes to confer jurisdiction of a proceeding *in rem* upon the State courts, even when the maritime law does not give a lien, if the contract secured by the statutory lien is maritime, as in the case of repairs to a vessel in her home port. Warren *v.* Kelley, 80 Maine, 512. Weston *v.* Morse, 40 Wis., 455. Steamer Petrel *v.* Dumont, 28 Ohio St., 602. Crawford *v.* the Bark Caroline Reed, 42 Cal., 469. Dever *v.* Steamboat Hope, 42 Miss., 715. *In re* Steamboat Josephine, 39 N. Y., 19. Sheppard *v.* Steele, 43 N. Y., 52. Brookman *v.* Hamill, 43 N. Y., 554, 557. Poole *v.* Kermit, 59 N.Y., 554. The John Farron, 14 Blachf., 24, 26. The Guiding Star, 18 Fed. Rep., 263, 267. The Madrid, 40 Fed. Rep., 677, 680.

"On the other hand there are decisions and dicta the other way, including one case in this court. Donnell *v.* the Starlight, 103 Mass., 227, 230. Southern Dry Dock Co., *v.* Gibson, 22 La. An., 623. Williamson *v.* Hogan, 46 Ill., 504. Mitchell *v.* the Steamboat Magnolia, 45 Mo., 67. Boylan *v.* the Steamboat Victory, 40 Mo., 244.

"The Supreme Court of the United States has given no decision upon the question. Had it done so, of course we should defer to its authority upon a matter of which it is the final judge. But until there is a direct adjudication by the only tribunal whose decision is an authority, we feel bound to exercise our own judgment upon the merits of the case. The dicta which have been uttered in rendering decisions of the Supreme Court have not been consistent. In the Lottawanna, 21 Wall., 558, 580, the jurisdiction of the State courts is denied. In earlier cases, and, if we interpret their language rightly, in later ones, it is said or implied that the State courts can act. Johnson *v.* Chicago & Pacific Elevator Co., 119 U. S., 388, 309. Norton *v.* Switzer, 93 U. S., 355, 365, 366. The Belfast, 7 Wall., 624, 645, 646. The Steamer St. Lawrence, 1 Black, 522, 530, 531. Maguire *v.* Card, 21 How., 248, 251.

"The ground for denying the jurisdiction when the maritime law gives a lien is wanting here. The ground in that class of cases, as has been stated again and again, is that the State law purporting to create a parallel lien and a parallel jurisdiction is void. The Hine *v.* Trevor, 4 Wall., 555, 569. The Belfast, 7 Wall., 624, 644. Johnson *v.* Chicago and Pacific Elevator Co., 119 U. S., 388, 397;

but it has been decided, and it still is assumed by the Supreme Court of the United States, that the State laws creating liens like one before us are valid, and whatever might be our opinion were the question open to us, we proceed on that assumption without argument. Peyroux *v.* Howard, 7 Pet., 324. The Steamer St. Lawrence, 1 Black, 522. *Ex parte* McNiel, 13 Wall., 236, 243. The Lottawanna, 21 Wall., 558, 581. The Corsair, 145 U. S., 335, 347.

"If the statute creating the lien is valid, then it would be strange, to say the least, if the law which creates a right were incompetent to protect it, and we are justified in looking with some nicety at an argument which leads to that result. The main argument against the jurisdiction seems to be that the lien derives its quality from the contract, and that, as the latter is maritime, the former must be, and, as a maritime lien, solely within the jurisdiction of the District Court; or that the statute giving the District Courts jurisdiction 'of all civil causes of admiralty and maritime jurisdiction' excludes the State courts from all proceedings in aid of a maritime contract except such as fall within the description of 'a common law remedy,' in the saving clause; and that proceedings *in rem* to enforce the statutory lien are a remedy for the enforcement of the contract secured by the lien.

"But if the lien created by the State law were maritime in a strict sense, it would be the duty, and not merely the right, of the admiralty courts to enforce it. We do not understand the Supreme Court of the United States to assert the right to abolish libels *in rem* generally by rule. Yet in the successive changes of the twelfth admiralty rule it has asserted and exercised the right to regulate and to permit or to deny proceedings *in rem* in the admiralty to enforce liens of domestic material men. Moreover, as was said in The Belfast, 7 Wall., 624, 644, 'State legislatures have no authority to create a maritime lien'; and that proposition, as we have observed above, was the ground of decision in that class of cases.

"Again, if the lien were a mere matter of remedy, and were simply a right to a proceeding *in rem* as a mode of enforcing the contract to which it is attached, then, if the State law purported to attach one to a maritime contract, it would be equivalent to saying that there shall be a process *in rem* in the admiralty in suits to

enforce such contracts, and the question would arise how a State legislature could impose a new process upon a court outside of its power. Traces of such a doubt are to be seen occasionally. The Red Wing, 14 Fed. Rep., 869, 871. *In re* The Ship Edith, 11 Blatchf., 451, 454, and 94 U. S., 518. Compare the Milford, Swabey, 362. Yet the Supreme Court sustains the law, as has been shown, and under the present twelfth admiralty rule the United States admiralty courts may take jurisdiction to enforce the lien.

"We do not understand that the Supreme Court ever has intimated that the operation of the State law is dependent upon the admiralty rule for the time being; so that when the District Courts do not enforce the lien the State court may do so, but when a rule like the present is enforced the legislature cannot give them jurisdiction. We understand that, if the legislature has the power at any time, it has it, whatever the admiralty rule may be.

"It appears to us that the decisions sustaining the law and the power of the admiralty court to take jurisdiction under it are grounded on the assumption that such a lien is not a mere matter of remedy, but is a right of property, and as such is distinct from the proceeding *in rem* by which it is enforced. Rock Island Bridge, 6 Wall., 213, 215. The Maggie Hammond, 9 Wall., 435, 456. *Ex parte* McNiel, 13 Wall., 236, 243. The Lottawanna, 21 Wall., 558, 579. The Young Mechanic, 2 Curt., C. C. 404. The Barque Havana, 1 Sprague, 402. The Mary Ann, L. R. 1 Adm. & Eccl., 8, 11. The Two Ellens, L. R. 4 P. C., 161. If this be so it no more follows from the fact that the contract may give rise to a 'civil cause of admiralty jurisdiction' that enforcement of the lien is such a cause, than it follows that the foreclosure of a mortgage given to secure the same contract would be; nor does it seem to us to matter that the mode of enforcement is by a proceeding *in rem*. State courts can enforce liens not maritime by proceedings *in rem*. Foster *v.* The Richard Busteed, 100 Mass., 409. McDonald *v.* The Nimbus, 137 Mass., 360. Edwards *v.* Elliott, 21 Wall., 532. It may be asked how, if the lien is not maritime, the admiralty courts can be justified in enforcing it. It may be, as suggested by Bradley, J., in the Lottawanna, 21 Wall., 558, 580, that the United States courts did so in imitation of the colonial courts upon succeeding to them, and that the answer is to be

sought in history rather than in logic. Of course such liens would be recognized in any event when law and justice required it in the distribution of proceeds. The Harrison, 2 Abbott (U. S.), 74. The Cargo ex Galam, 2 Moore, P. C. (N. S.), 216, 236.

"In the absence of convincing reason or binding authority the other way, we feel bound to follow the case of Donnell *v.* The Starlight, 103 Mass., 227, 230, to the full extent of the proposition there laid down as settled, — 'that the Courts of a State have jurisdiction to enforce liens, created by its laws, for labor and materials furnished in constructing or repairing domestic vessels.'

'*Decree dismissing the petition reversed, and motion overruled.*

"Morton, J., I regret that I am unable to agree with the majority of the Court. Though a statute like that now enforced, and under which this suit was brought, has been upon our statute books since 1855 (Statute, 1855, c. 231,) and has been applied often by our courts, I do not think the law upon the question now presented has been settled so firmly by this Court that we should feel obliged to follow it if, on principle, and according to the weight of authority elsewhere, the position of the respondent seems to be sound. Apparently the question was regarded as an open one in the last case in which it came before this Court. McDonald *v.* The Nimbus, 137 Mass., 360, 363. The Court said in that case: 'We do not find it necessary to determine whether, under the existing decisions of the Supreme Court of the United States, and the existing admiralty rules, this Court has jurisdiction to enforce a lien created by the statutes of this Commonwealth for materials used or labor performed in repairing a domestic vessel.' In the case of Donnell *v.* The Starlight, 103 Mass., 227, on which the opinion of the majority of the Court relies, the question does not seem to have been much considered.

"It is provided by the statutes of the United States that the District Court shall have jurisdiction, exclusive of the courts of the several states, of 'all civil causes of admiralty and maritime jurisdiction; saving to suitors in all cases the right of a common law remedy, where the common law is competent to give it' (U. S. Rev. Sts., sect. 563, cl. 8; U. S. Rev. St., sect. 711, cl. 3.) Under these provisions, the State courts can take jurisdiction of civil maritime causes only so far as to enforce common law remedies which the common law is competent to give. No State can give its courts any other power over them.

"There can be no doubt that a contract to repair a domestic vessel is a maritime contract. If, in the uncertainty which prevailed as to the extent of the admiralty jurisdiction, doubts existed upon that point, they have disappeared, and it is now well settled that such is its character. (Peyroux *v.* Howard, 7 Pet., 324. Steamboat Orleans *v.* Phœbus, 11 Pet., 175, 183. The Steamer St. Lawrence, 1 Black, 522, 529. The Lottawanna, 20 Wall., 201, 219 and 21 Wall., 558, 580. See Maguire *v.* Card, 21 Howard, 248. The Madrid, 40 Fed. Rep., 677. Steamer Petrel *v.* Dumont, 28 Ohio St., 602.) A cause of action arising upon such a contract is therefore a civil cause of maritime jurisdiction, and exclusively cognizable in the District courts, except so far as the common law is competent to give the suitor a common law remedy. To that extent, and that only, he may resort to the State courts. In this case the lien and the proceedings by which it is sought to enforce it are not common law remedies, nor is the common law competent to give them. (The Steamboat General Buell *v.* Long, 18 Ohio St., 521.) They are the creations of a State statute. (McCarthy *v.* Neu, 93 Ill., 455. Trask *v.* Searle, 121 Mass., 229.) There would seem to be no doubt that a State legislature may give to parties furnishing labor and materials in repairing a domestic vessel a lien for the same, and may provide by proceedings *in personam* and by process of attachment for its enforcement. (Leon *v.* Galceran, 11 Wall., 185, 191, 192. Johnson *v.* Chicago & Pacific Elevator Co., 119 U. S., 388, 399. Warren *v.* Kelley, 80 Maine, 512. Waggoner *v.* St. John, 10 Heisk, 503. Marshall *v.* Curtis, 5 Bush., 607, 615. Wight *v.* Maxwell, 4 Mich., 44, 54. Walters *v.* The Steamboat Mollie Dozier, 24 Iowa, 192. Process *in personam*, and process of attachment are common law remedies. Or the legislature may give the right to a lien, and leave the parties to seek its enforcement in the District Court, where the contract on which it is based is cognizable, and where the rules now admit of the enforcement of such a lien. The maritime law as administered in this country does not give a lien for supplies, labor, or materials furnished in repairing a vessel in her home port, and there would seem to be no valid objection to a State legislature giving one, at least till Congress acts on the matter, though a doubt has been intimated on the subject. (Cases *supra*. Butler *v.* Boston & Savannah Steamship Co., 130 U. S. 527, 558. But a State legis-

lature cannot give a right of lien to a maritime contract, and provide for its enforcement by proceedings which are to all intents and purposes peculiar to admiralty courts, and which the common law is wholly incompetent to give. (The Madrid, *ubi supra*. United States *v.* Burlington & Henderson County Ferry Co., 21 Fed. Rep., 331, 337. The Steamboat General Buell *v.* Long, *ubi supra*. Wight *v.* Maxwell, *ubi supra*. Waddell *v.* the Steamer Daisy, 2 Wash. T. 76, 80. That is not saving to suitors common law remedies which the common law is competent to give. It is giving them legislative remedies in common law courts, which are not what is saved. If it were, then State legislatures could create liens based on maritime contracts, and provide for their enforcement by proceedings *in rem*, in cases where the maritime law also gave a lien and proceedings *in rem*. It is admitted that they cannot do so. Still further, if a State can give a lien to a maritime contract where none exists by the maritime law, and provide for its enforcement by proceedings *in rem* in its own courts, it follows that the exclusive jurisdiction of the District Courts is limited in all cases arising upon maritime contracts to those in which a lien enforceable by proceedings *in rem* is given by the maritime law; and the question of exclusive jurisdiction is made to turn in each case, not on the question whether the cause of action arises upon a maritime contract, but on the question whether by the maritime law a lien enforceable by proceedings *in rem* is attached to it. I think such a construction is unwarranted.

"Whatever may be the case regarding liens created by the maritime law or the common law, the lien created by the statute in this case is in the nature of a remedy designed to secure the performance of the contract on which it is based. (Mobile Building & Loan Association *v.* Robertson, 65 Ala., 382. Crawford *v.* the Bark Caroline Reed, 42 Cal., 469. Roberts *v.* Jacks, 31 Ark., 597. The Steamer Petrel *v.* Dumont, *ubi supra*. Hall *v.* Bunte, 20 Ind., 304. Bolton *v.* Johns, 5 Penn. St., 145. Frost *v.* Ilsley, 54 Maine, 345. Barrows *v.* Baughman, 9 Mich., 213. It is wholly unlike a mortgage or any other contract between the parties. The statute could be repealed without affecting the obligation of the contract, saving only rights which had become vested by compliance with its terms. It is like the lien given by an attachment of real estate. Any other view makes the lien instead of the contract

on which it is based, and whose performance it is intended to secure, the substantive cause of action. (See Phillips on Mech. Liens (2d ed.), sects. 9, 24, where the matter is considered and the authorities are collected. Whether the contract is maritime does not depend on the question whether it can be enforced by a lien and proceedings *in rem*, but on the nature and subject matter of it. (Insurance Co. *v.* Dunham, 11 Wall., 1. People's Ferry Co. *v.* Beers, 20 Howard, 393, 401. Walters *v.* the Steamboat Mollie Dozier, *ubi supra*. If its nature and subject matter make it maritime, then proceedings to enforce it are exclusively cognizable in the District Courts, except as to the common law remedies saved to suitors.

"Liens given by State laws to parties furnishing labor and materials in repairing domestic vessels have long been enforced by the District Courts. Their enforcement has been sustained by the Supreme Court of the United States. Peyroux *v.* Howard, *ubi supra*. The Lottawanna, 21 Wall, 558, 580. The Corsair, 145 U. S., 335, 347; but they have not been enforced by the District Courts because the State law could confer jurisdiction upon them, or could create maritime liens. They could not do either. The Belfast, 7 Wall., 624, 644. *Ex parte* McNiel, 13 Wall., 236, 243. Edwards *v.* Elliott, 21 Wall., 532, 556. Neither have they been enforced as a matter of right on the part of the suitor, and because the District Courts were bound to enforce them, which would only be another way of saying that the State laws could create maritime liens and confer jurisdiction on the District Courts. The Steamer St. Lawrence, 1 Black, 522, 528. But the State legislatures having given to certain maritime contracts a lien in the nature of a maritime lien, though, strictly speaking, not such, the District Courts, which had cognizance of the contracts on which such liens were based, and whose performance they were designed to secure, have enforced them in the interests of justice. The Steamer St. Lawrence, *supra*. The Samuel Marshall, 49 Fed. Rep., 754, 758. Weston *v.* Morse, 40 Wis., 455. Crawford *v.* Bark Caroline Reed, 42 Cal., 469. Warren *v.* Kelley, 80 Maine, 512. Hamilton *v.* Merrill, 25 Ohio St., 11. Case *v.* Wolley, 6 Dana, 17. Wight *v.* Maxwell, *ubi supra*. Finding the liens in existence, and within their power to enforce, the District Courts have enforced them on the same principle on which they have enforced liens

given by foreign laws. The Maggie Hammond, 9 Wall., 435, Barque Havana, 1 Sprague, 402. *Ex parte* McNiel, 13 Wall., 236, 243. The Schooner Columbus, 5 Sawyer, 487, 488. This was not a conferring of jurisdiction on the District Courts by the State or foreign laws. The jurisdiction, as said in *Ex parte* McNiel, *supra*, existed already, and was invoked to give effect to the right by applying an appropriate remedy whether the lien created by the State law could be enforced *in rem* in the District Courts was a matter of practice, and not of right on the suitor; and it was within the power of the Supreme Court of the United States to provide by its rules whether such liens could or could not be enforced in the District Courts by proceedings *in rem*. The Steamer St. Lawrence, *supra*, U. S., Rev. Stats., sects. 917, 918. The fact that the Supreme Court did not provide for the enforcement by proceedings *in rem* in the District Courts would not enlarge the power of State legislatures to provide for their enforcement by remedies which the common law was not competent to give.

"It is not remarkable that in our system of Federal and State Courts there should be some matters in regard to which State legislatures might create a right which could not be enforced in the State Courts in a certain mode, but could in the District Courts; or that they should be able to give a right not enforceable in the State Courts, but which could be enforced in the District Courts. The first statute in this State giving a lien for repairs on domestic vessels furnishes an illustration of the latter. St. 1848, ch. 290. No remedy was given, and it was evidently expected that resort would be had to the District Courts, whose rules then permitted such liens to be enforced by proceedings *in rem*. It was said formerly that liens like this could be enforced by State Courts by proceedings *in rem*, under statutes giving them such authority; Abbott on Shipping (7th Am. ed.), 143, n. 3. 1 Parsons, Marit. Law, 501, n. 2; 2 Parsons, Marit. Law, 640; and there are some expressions by the Supreme Court of the United States to the same effect. Norton *v.* Switzer, 93 U. S., 355, 365, 366. Johnson *v.* Chicago & Pacific Elevator Co., 119 U. S., 388, 399. But the latest case (the Lottawanna, 21 Wall., 558, 580), in which the question has been considered, holds that they cannot; and such appears to me to be the result of the later decisions in that

Court, though in some of them it should be said that there was a lien by the admiralty law. The Hine *v.* Trevor, 4 Wall., 555, 571, 572. The Moses Taylor, 4 Wall., 411. The Belfast, 7 Wall., 624, 644. Edwards *v.* Elliott, 21 Wall., 532, 556. Leon *v.* Galceron, 11 Wall., 185. Two of the justices of that Court on circuit have taken that view of the law; The Guiding Star, 18 Fed. Rep. 263, Justice Matthews; The Madrid, 40 Fed. Rep., 677, Justice Lamar; and so have the judges of various Circuit and District Courts. In other States where the question has arisen, the great weight of authority is opposed to the exercise of such jurisdiction by the State Courts. Warren *v.* Kelley, 80 Maine, 512. Western *v.* Morse, 40 Wis., 455. Steamer Petrel *v.* Dumont, 28 Ohio St., 602. Crawford *v.* The Bark Caroline Reed, 42 Cal., 469. Dever *v.* Steamboat Hope, 42 Miss., 715. *In re* Steamboat Josephine, 38 N. Y., 19. Sheppard *v.* Steele, 43 N. Y., 52. Poole *v.* Kermit, 59 N. Y., 554. The John Farron, 14 Blatchf., 24, 26. U. S. *v.* Burlington & Henderson County Ferry Co., 21 Fed. Rep., 331, 337. Waggoner *v.* St. John, 10 Heisk, 503. Marshall *v.* Curtis, 5 Bush, 607. Wight *v.* Maxwell, 4 Mich., 44. Walters *v.* The Steamboat Mollie Dozier, 24 Iowa, 192. On principle and authority, therefore, I think that the ruling was right.

"Knowlton J., concurs in this opinion.

"R. W. Foster, *for the petitioner.*

"E. P. Carver (E. E. Blodgett with him), *for the respondents.*"

Record, p. 25, and 157 Mass. 525.

On January 16, 1893, the defendants filed an answer to the merits without waiving, but insisting upon, their motion to dismiss. (Record, p. 26.) Said action was then sent to an auditor, to find the accounts, and upon his return thereof, the said Superior Court upheld the lien against said tug Glide for the sum of $147.03, and ordered a sale of the tug to satisfy the same; ruling that said Superior Court had jurisdiction to entertain and enforce an *in rem* process.

Record, pp. 27–29.

To that ruling the defendants duly excepted, and, their exception being duly filed and allowed, was again transmitted to the Supreme Judicial Court for the Commonwealth for its determination, and that Court, on May 16, 1893, overruled said exception.

Record, pp. 29–30.

In the following language:

"ATLANTIC WORKS v. TUG GLIDE AND OWNERS.

"SUFFOLK. MARCH 20, 1893. MAY 16, 1893.

"Present: FIELD, C. J., ALLEN, HOLMES, MORTON and LATHROP, JJ.

"Lien for repairs on a vessel — Constitutional Law — Former judgment in the same cause.

"Where an exception was disposed of by a former judgment of the Court in the same cause, the Court declared that it felt compelled to adhere to its opinion.

"PETITION, under Pub. Sts. c. 192, sect. 17, to enforce a lien given by Section 14 of that chapter for repairs furnished to a tugboat in her home port.

"At the trial in the Superior Court, before BOND, J., it appeared that the Tug Glide was a vessel owned in Boston, and engaged in towing vessels in and out of the harbor of Boston to the neighboring ports. The lien claimed under the statute was for labor and materials furnished in repairing the vessel by the petitioners at her home port. The respondents asked the Judge to rule that, inasmuch as this was an action *in rem* against the Tug Glide, the Superior Court had no jurisdiction, the said statute being contrary to the Constitution of the United States, inasmuch as, under the Constitution of the United States, full admiralty jurisdiction was given to the United States courts; but the Judge ruled that the Superior Court had jurisdiction, to which ruling the respondents excepted.

"The Judge found for the petitioner, and directed a sale of the tug under the provisions of the statutes; and the respondents alleged exceptions.

"R. W. FOSTER,
"*For the Petitioner.*

"E. P. CARVER (E. E. BLODGETT with him),
"*For the Respondents.*

"HOLMES, J. This exception is disposed of by our former judgment in the same cause. (157 Mass. 525.) The later decision by the Supreme Court of the United States in the J. E. Rumball (148 U. S. 1), contains some expressions contrary to our conclu-

sion, but, as the point adjudicated is consistent with it, we feel compelled to adhere to our opinion."

"*Exceptions overruled.*"

Record, p. 30; 159 Mass. 60.

Whereupon, on May 22, 1893, said Superior Court ordered and decreed that the lien was established for $148.63 damages, and $115.74 costs, and ordered a sale of said tug Glide to satisfy the same, and a warrant for said sale was issued on May 24, 1893, and the tug sold under the same.

Record, pp. 30–31.

Whereupon, on Sept. 9, 1893, a writ of error was sued out of this Court to the said Superior Court of Massachusetts.

Record, pp. 2, 3.

The assignments of error are found on pp. 3–4 in the Record, and the only questions involved are whether an action *in rem* can be brought in a State Court against a domestic vessel to enforce a lien given by a State Statute for repairs furnished such domestic vessel in her home port, and whether a State Statute allowing such an action to be enforced in the State Court is constitutional.

The plaintiffs in error contend: —

First. That the United States Courts have exclusive admiralty and maritime jurisdiction saving to suitors in all cases the right of a common law remedy where the common law is competent to give it.

Second. That a contract for repairs to a domestic vessel is a maritime contract.

Third. That a process *in rem* is peculiarly an admiralty and not a common law remedy.

Fourth. That a State Statute authorizing a State Court to proceed *in rem* to enforce a lien upon a domestic vessel for repairs furnished in her home port is unconstitutional and void.

By the Constitution of the United States, the judicial power is vested in "one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish."

Constitution of U. S., Art. III, Sect. I.

The next section gives the United States Courts exclusive jurisdiction,—"The judicial power shall extend to all cases of admiralty and maritime jurisdiction."

Constitution of U. S., Art. III, Sect. II.

The judiciary act of 1789 gives the U. S. District Courts original admiralty jurisdiction. (Revised Statutes of U. S., Sect. 563, cl. 8), and exclusive admiralty jurisdiction was vested by Congress in the United States District Courts in the following words: —

"Of all civil causes of admiralty and maritime jurisdiction; saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it."

Rev. St. U. S., Sect. 711, Cl. 3.

Thus we submit that if the cause of action was one of admiralty and maritime jurisdiction, then, unless the remedy adopted was a common law remedy, the United States District Courts had exclusive jurisdiction, the State Court was without jurisdiction, and a State Statute giving such jurisdiction was unconstitutional.

The original petition was brought to enforce payment of a bill for repairs furnished to a domestic vessel in her home port, and there can, at the present day, be no question but that such a contract is a maritime one, and therefore is a cause of admiralty or maritime jurisdiction, and under the Constitution and laws of the United States exclusively cognizable in the United States District Courts, except so far as the suitor is given a remedy at common law.

Peyroux *v.* Howard, 7 Pet. 324.
The Planter, 7 Pet. 341.
The St. Lawrence, 1 Black, 522.
The Lottawanna, 20 Wall., 201, and 21 Wall., 558.

Thus, in the case at bar, the State Court would have no jurisdiction unless the remedy adopted was a common law remedy, and one the common law was competent to give.

The remedy given by the State statute, and used in this case, is a proceeding *in rem*, i. e. against the vessel to enforce a lien, being a statutory and not a common law remedy.

The Steamboat General Buell *v.* Long, 18 Ohio St. 521.
McCarthy *v.* Neu, 93 Ill. 455.
Trask *v.* Searle, 121 Mass. 229.

And it has been repeatedly held by this Court that a process *in rem* is peculiarly an admiralty and not a common law remedy.

The Moses Taylor, 4 Wall. 411.
The Belfast, 7 Wall. 624.
The Lottawanna, 20 Wall. 201; 21 Wall. 558.
The Guiding Star, 18 Fed. Rep. 263.
The Yankee Blade, 19 Howard, 82.

Process *in personam* and an attachment of property thereunder are common law remedies, but the enforcement of a lien on property itself is not a common law remedy; but is one which is either created by statute or exists in the Admiralty Law of this country.

Therefore we submit that a proceeding *in rem* to enforce a lien given by a State statute for repairs to a domestic vessel is not a common law remedy which the common law is competent to give, and therefore the exclusive jurisdiction of such a remedy is in the United States District Court, and must be enforced there if at all.

There is no doubt that the general admiralty law gives no lien for repairs furnished a vessel in her home port, and therefore no process *in rem* can be brought in the United States Courts to enforce payment for such repairs under the general admiralty law; yet as we have seen, such a contract is a maritime contract and therefore one which Congress or the Federal Courts could make a part of the admiralty jurisdiction.

By the Revised Statutes of the United States, section 917, Congress gave to the Supreme Court of the United States power to regulate the process in the United States Courts in Equity and Admiralty, and the rules of that Court have received a judicial interpretation which gives to them the effect of an Act of Congress when they are not in conflict with any existing statute of the United States.

Steamer St. Lawrence, 1 Black, 522.

Under the powers thus given several rules have been made by the Supreme Court relating to this matter, and in 1872 the present admiralty Rule 12, as amended (see 13 Wall. 14), was promul-

gated, and is as follows: "In all suits by material men for supplies or repairs, or other necessaries, the libellant may proceed against the ship and freight *in rem*, or against the master or owner *in personam*." It is well settled that whenever a State statute creates a lien for repairs or supplies furnished to a vessel in her home port, that this lien is within the admiralty and maritime jurisdiction and may be enforced *in rem* in the United States District Courts under the provisions of this rule of Court.

The General Burnside, 3 Fed. Rep. 234.
The Madrid, 40 Fed. Rep. 677.
The St. Lawrence, 1 Black, 529.
The Lottawanna, 21 Wall. 558.

It must follow that the State Court cannot have jurisdiction *in rem* of such a cause of action, and that any State statute authorizing the State Court to proceed *in rem* against a vessel must be held to be unconstitutional.

The B. F. Woolsey, 3 Fed. Rep. 457, 464.
The Kingston, 23 Fed. Rep. 203.
The Moses Taylor, 4 Wall. 411.
The Lottawanna, 21 Wall. 558, 580.
Johnson *v.* Chicago Elevator Co., 119 U. S. 388, 397.
Warren *v.* Kelley, 80 Me. 512.
The J. E. Rumball, 148 U. S. 1.

We submit that the decision in the case of the J. E. Rumball (*supra*) is one directly in point, and that the statement of Judge Holmes of the Supreme Court of Massachusetts in the opinion in this case, that the words used were mere dicta, is incorrect.

Opinion of Holmes J., Atlantic Works *v.* Tug Glide, 159 Mass. 60 (*supra*).

We submit that the decree of the Superior Court should be reversed, and an order issue dismissing the petition of the Atlantic Works on the ground that so much of the Statute of Massachusetts which prescribes a method of enforcing the lien by an *in rem* process against a vessel is unconstitutional and beyond the powers of a State Court, and that a proceeding *in rem* against a

vessel is not a common law remedy, but one which by the Constitution and laws of the United States is *exclusively* vested in the District Courts of the United States.

EUGENE P. CARVER,
EDWARD E. BLODGETT.
Of Counsel.

167 U.S. 606

APR 29 1896

JAMES H. McKENNEY
CLERK

167-606

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1895.

No. 39.

The Tug "GLIDE" and Owners,

Plaintiffs in Error,

vs.

THE ATLANTIC WORKS,

Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

JOSHUA H. MILLETT,
RALPH W. FOSTER,
Of Counsel.

BOSTON:
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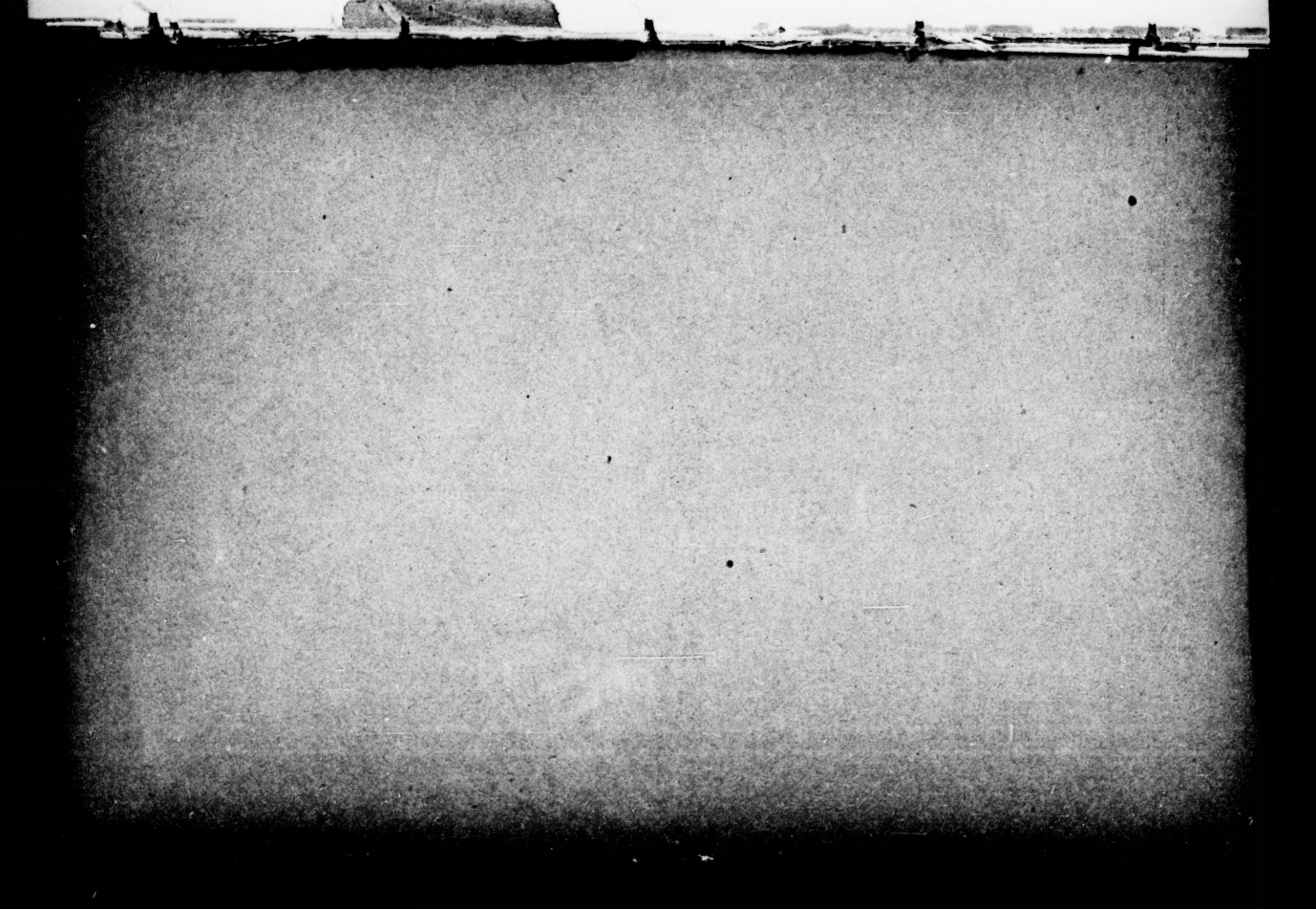

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

NO. 276.

THE TUG "GLIDE" AND OWNERS, PLAINTIFFS IN ERROR,

vs.

THE ATLANTIC WORKS.

BRIEF OF THE ATLANTIC WORKS.

The question before this court is one of jurisdiction. Broadly stated, it is this:

Can a State provide for the enforcement, in her own courts, by a proceeding *in rem*, of a lien, created by the State, for repairs to a vessel in her home port?

The question assumes that a State can create a valid lien for repairs to a domestic vessel, and the assumption is based on well-settled law.

Mr. Justice Story says:

> But in respect to repairs and necessaries in the port or State to which the ship belongs, the case is governed altogether by the municipal law of that State; and no lien is implied, unless it is recognized by that law.
>
> (1819) *The General Smith*, 4 Wheaton 438.

Mr. Justice Bradley says:

> It seems to be well settled in our jurisprudence that so long as Congress does not interpose to regulate the subject, the rights of material men furnishing necessaries to a vessel in her home port may be regulated in each State by State legislation.
>
> (1874) *The Lottawanna*, 21 Wall. 558-579, 580.

The origin of the State lien is interesting. Benedict's Admiralty Practice (3rd edition), § 271:

> By the civil law, those who built, repaired or supplied a ship had a privilege or lien upon the ship herself, for the amount of the debt thus contracted in creating her, or in keeping up her existence and usefulness.

§ 272:

> The civil law, the general maritime law, and the particular maritime codes, without exception, extend this lien or privilege to all ships and vessels, without any distinction between foreign and domestic ships.

This lien is what is known as the maritime lien, and is defined as follows by Mr. Justice Grier:

> The maritime "privilege" or lien is adopted from the civil law, and imports a tacit hypothecation of the subject of it. It is a "*jus in re*," without actual possession or any right of possession. It accompanies the property into the hands of a *bona fide* purchaser. It can be executed and divested only by a proceeding *in rem*.
>
> (1856) *The Yankee Blade*, 19 How. 82-89.

Mr. Justice Gray, delivering the opinion of the court (in the case of *The J. E. Rumbell*), quotes this language of Mr. Justice Grier, and, commenting on the cases of *The Young Mechanic* and *The Kiersage*, cited by Mr. Justice Grier, says:

> In *The Young Mechanic*, after elaborate discussion of the nature of such a lien, it was held to be a *jus in re*, a right of property in the thing itself, existing independently of possession; "an appropriation made by the law, of a particular thing, as security for a debt or claim; the law creating an incumbrance thereon, and vesting in the creditor what we term a special property in the thing, which subsists from the moment when the debt or claim arises, and accompanies the thing even into the hands of a purchaser." "Though tacitly created by the law, and to be executed only by the aid of a court of justice, and resulting in a judicial sale, it is really a property in the thing, as the right of a pledgee, or the lien of a bailee for work;" and is not "only a privilege to arrest the vessel for the debt, which, of itself, constitutes no incumbrance on the vessel, and becomes such only by virtue of an actual attachment." 2 Curtis C. C., 406, 410, 412.
>
> In *The Kiersage*, Mr. Justice Curtis held that the lien for labor and materials in the home port had precedence over a prior mortgage; and, after observing that, as he had held in *The Young Mechanic*, this lien "was, in substance, a tacit hypothecation of the vessel, as security for the debt;" "a *jus in re*, constituting an incumbrance on the property by operation of law;" he added: "And there can be no doubt that it takes effect wholly irrespective of the state of the title to the vessel. Whether the vessel belongs to one or more persons —

whether the title has been so divided that one is a special and another a general owner, and however it may be incumbered, the law gives the lien on the thing. The mortgagees can have no claim to be preferred over the lien-holder because of their priority in time, for their interest in the vessel is as much subject to the statute lien, as the interest of any other party. It is not in the power of the owner, by his voluntary act, to withdraw any part of the title from the operation of the lien; if he could, he might altogether defeat it." 2 Curtis C. C., 422, 423. "A maritime lien, unlike a lien at common law, may," said Mr. Justice Field, speaking for this court, "exist without possession of the thing upon which it is asserted, either actual or constructive. It confers, however, upon its holder such a right in the thing, that he may subject to condemnation and sale to satisfy his claim or damages." "The only object of the proceedings *in rem* is to make this right, where it exists, available — to carry it into effect. It subserves no other purpose." *The Rock Island Bridge*, 6 Wall. 213–215. And in *The Lottawanna*, Mr. Justice Bradley, speaking of a lien given by a statute of Louisiana for repairs and supplies, said "a lien is a right of property and not a mere matter of procedure." 21 Wal. 558-579.

(1892) *The J. E. Rumbell*, 148 U. S. 1–10, 11.

The maritime lien

"is a sort of proprietary interest, springing from the nature of the transaction and the beneficial service rendered to the ship."

Benedict's Ad. Prac., § 271.

But under the maritime law, "as accepted and received in this country," no such lien exists in favor of one furnishing repairs to a domestic vessel. *The General Smith* (*supra*). *The Lottawanna* (*supra*).

And, because of this failure of the "United States maritime law" to secure him, who furnishes repairs to a domestic vessel, the several States have created liens for his protection.

These State liens have been constantly recognized as valid, but, as already stated, they are not maritime liens.

Mr. Justice Clifford says:

Authority does not exist in the State courts to hear and determine a suit *in rem*, as in the admiralty courts to enforce a maritime lien. Doubt upon that subject cannot be entertained; but the recent decision of the court holds that such a lien does not arise in a contract for repairs and supplies to a vessel in her home port.

(1876) *Norton, Assignee*, v. *Switzer*, 93 U. S. 355–365, 366.

There is no difficulty *per se* in a State's enforcing, in her own courts, a lien upon a vessel, by a proceeding *in rem*. All the

authorities agree that, where the State gives a lien to the builder of a vessel, the State may provide for such enforcement.

Mr. Justice Gray says:

> It is now settled that a contract for building a ship, being a contract made on land and to be performed on land, is not a maritime contract, and that a lien to secure it, given by local statute, is not a maritime lien and cannot therefore be enforced in admiralty. *The Jefferson*, 20 How. 393; *The Capitol*, 22 How. 129; *Edwards* v. *Elliott*, 21 Wall. 532.
>
> (1892) *The J. E. Rumbell*, 148 U. S. 1-11.

While it is thus admitted that States may create a lien for repairs furnished to a vessel in her home port, and that such a lien is not a maritime lien, there has arisen a conflict of opinion as to how far a State may enforce such liens, or provide for the enforcement of such liens, in her own courts.

There are some decisions and numerous dicta to the effect that a State cannot provide for the enforcement of such a lien by a proceeding *in rem* in her own courts. And the principal reason assigned is that the contract for repairs to a vessel in her own port is a *maritime contract*, and that the federal courts having jurisdiction of the *maritime contract* can alone enforce the *non-maritime lien* by a proceeding *in rem*.

This exclusive jurisdiction is claimed by virtue of the following provisions:

Constitution of the United States (Art. III., Sec. 2):

> The judicial power shall extend * * * to all cases of admiralty and maritime jurisdiction.

Rev. Stat. U. S., Sec. 563:

> The district courts shall have jurisdiction as follows: Eight — Of all civil causes of admiralty and maritime jurisdiction; saving to suitors in all cases the right of a common-law remedy, where the common law is competent to give it.

Rev. Stat. U. S., Sec. 711:

> The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States: Third — Of all civil causes of admiralty and maritime jurisdiction; etc. (Supra.)

From these several provisions it is argued:

(1) The contract to furnish repairs to a vessel is a maritime contract.

(2) The State lien given for repairs to a domestic vessel is founded upon a maritime contract.

(3) Such maritime contract is a cause of "admiralty and maritime jurisdiction," and such jurisdiction is exclusive, except as to common-law remedies.

(4) A proceeding *in rem* is not a common-law remedy.

(5) Therefore, the suitor cannot avail himself of a process *in rem* in a State court.

This reasoning assumes an identity in the two liens, State and maritime, that does not exist. And it becomes necessary to inquire into the nature of these liens. As has been said, the maritime lien "springs forth of itself." No effort is made to acquire it. No step is taken to perfect it. It is spontaneous and complete. It is always presumed. One furnishing repairs to a foreign vessel acquires *ipso facto* this maritime lien. He may even be ignorant of its acquisition. All he does is to perform his contract. The maritime law provides a maritime lien. The lien is an ingredient of the contract. The contract performed, the lien attaches *sponte sua*. The two essentials are —

(1) A maritime contract as the foundation of the lien.

(2) The creation of the maritime lien by maritime law.

While the first requisite, a maritime contract, is essential, it is not sufficient; for one who furnishes repairs to a home vessel, though his contract be a maritime contract, has no maritime lien.

The absolute requisite, therefore, to the existence of a maritime lien is that it be the *creation* of the maritime law.

Such a maritime lien is pre-eminently a "case of admiralty and maritime jurisdiction;" not because founded upon a maritime contract, but because *created by the maritime law*.

Looking now at the State lien, it will be found to differ from the maritime lien in many particulars.

(1) It is not a maritime lien; *i. e.*, it is not created by maritime law.

(2) It is not spontaneous, but must be perfected.

Howes v. *Mitchell*, 15 Gray 234.

(3) It may be founded upon a maritime contract, but it is not an ingredient of that contract.

(4) It requires something more than the performance of the contract to create it.

(These propositions are true with respect to the Massachusetts State lien, and are probably true of all other State liens.)

And when it is said that this State lien, once perfected, is not a maritime lien, it can only mean that the maritime law has not created it, and that in admiralty no such lien exists.

Such State lien, therefore, cannot be a "case of admiralty and maritime jurisdiction."

But it is said that admiralty may recognize this *non-maritime* lien, the creation of a State statute, and enforce such lien in the admiralty court, or may not. And as a matter of fact admiralty has exercised jurisdiction in the case of domestic liens, or refused jurisdiction, as inclination dictated. The history of its restless attitude toward this matter is written in the changes, to which Rule XII., so called, has been subjected.

Rule XII., as originally made in December Term, 1844:

> In all suits by material men for supplies or repairs or other necessaries, for a foreign ship, or for a ship in a foreign port, the libellant may proceed against the ship and freight *in rem* or against the master or the owner alone *in personam*. And the like proceeding *in rem* shall apply to cases of domestic ships, where by the local law a lien is given to material men for supplies, repairs or other necessaries.

By the change of the rule in 1858, the last clause was changed to read as follows:

> And the like proceeding *in personam*, but not *in rem*, shall apply to cases of domestic ships for supplies, repairs or other necessaries.

On May 6, 1872, the Supreme Court promulgated a new twelfth rule, to read as follows:

> In all suits by material men for supplies or repairs, or other necessaries, the libellant may proceed against the ship *in rem*, or against the master or owner alone *in personam*.

It may be remarked here that, while the State lien is always valid, its efficacy is made to depend upon a rule of the Supreme Court. The lien without a provision for its enforcement is valueless, and ceases virtually to be a lien. To say that a man has a lien, but no way in which to enforce it, is practically to say that he has no lien. Therefore, to say that a State lien is valid is to say that it can be enforced. But if the federal courts refuse to take jurisdiction, the lien can only be enforced in the courts of the State creating it.

This attitude of the federal courts toward the furnisher of repairs to a domestic vessel is strange and anomalous. The suitor is told to-day that he has a good and valid lien, and that he may enforce it. To-morrow he is told that his lien is still good and valid, but that he may not enforce it. The reasons given for this intermittent assumption and rejection of jurisdiction are these:

(1) We will assume jurisdiction, because a State lien is founded upon a maritime contract.

(2) We will refuse jurisdiction, because a State lien is not a maritime lien.

But the federal courts cannot assume or reject jurisdiction at will, and least of all by force of a rule directed to that end.

When we remember, that to grant a proceeding *in rem* means to assume jurisdiction, and that to deny such proceeding means to deny jurisdiction, it is plain that, under the guise of a rule of practice, is regulated a matter of jurisdiction. Mr. Justice Taney says:

> And the alteration in the rules applies altogether to the character of the process to be used in certain cases, and has no relation to the question of jurisdiction.
>
> (1861) *The Steamer St. Lawrence*, 1 Black. 522-526.

Mr. Justice Bradley says: —

> But we must always remember that the court cannot make the law, it can only declare it. If, within its proper scope, any change is desired in its rules, other than those of procedure, it must be made by the legislative department.
>
> *The Lottawanna*, 21 Wall. 558-576, 577.

Much difficulty may be avoided by bearing in mind the distinctive features of a lien (on a vessel) — whether the lien be a maritime lien or a State lien.

The lien is closely associated with a contract, upon which it may be said to be founded; and it is as closely associated with the remedy provided for its enforcement. But the lien is not the contract, being, as we have seen, an independent *jus in re*. Nor is the lien the remedy, the remedy being the *actio in rem*.

Overton on Liens (Banks & Brothers ed.), § 680:

A maritime lien is a *jus in re* and exists independent of process required to execute.

Waples' Proceedings in Rem, § 472:

It was held in *The Feronia* that no rule of court could destroy the rights of a libellant to his procedure *in rem* against a vessel; and, in *The Kate Tremaine*, that a proceeding *in rem* is not a mere remedy, but a substantial right, of which, if a party is deprived, he in effect loses his lien.

He who perfects his lien has thenceforth—

(1) His contract, which he may pursue regardless of any lien.

(2) His lien, which he may proceed to enforce.

But, though the lien is distinct from the remedy, it is valueless without the remedy.

It is natural and essential, therefore, that the State creating the lien provide the remedy, on which the value of the lien depends.

Such a remedy most of the States have provided, and such a remedy the Commonwealth of Massachussetts has provided. Public Statutes of Massachusetts, Chap 192, Sec. 17:

Such lien may be enforced by petition to the Superior Court for the county where the vessel was at the time when the debt was contracted, or in which she is at the time of instituting proceedings. The petition may be entered in court or filed in the clerk's office in vacation, or may be inserted in a writ of original summons with an order of attachment, and served, returned, and entered like other civil actions, and the subsequent proceedings for enforcing the lien shall, except as hereinafter provided, be as prescribed in chapter one hundred and ninety-one, for enforcing liens on buildings and land, so far as the provisions of said chapter are applicable. At the time of entering or filing the petition, a process of attachment against such vessel, her tackle, apparel, and furniture, shall issue and continue in force, or may be dissolved like attachments in civil cases, but such dissolution shall not dissolve the lien.

A State cannot, of course, thrust jurisdiction upon other than her own courts. The State cannot create a lien, and provide a remedy on the lien in the federal courts, which remedy those courts will be bound to apply.

That a State can provide for the enforcement of liens created by her has been the opinion of many eminent jurists.

Mr. Justice Thompson says:

But where the repairs for necessaries have been made or furnished in a port or place to which the vessel belongs, the case is governed by the local law of the State, and no lien is implied unless given by the law. And if

the local law gives a lien, it may be enforced in the District Court, otherwise not. This was the doctrine of the Supreme Court in the case of *The General Smith* (4 Wheat. 438).

That the State tribunals had authority also to enforce the lien in the present case is very certain from the express provisions of the law. There was then a concurrent jurisdiction in the two courts; and the proceedings under the State authority were in the nature of proceedings *in rem*, and the rights to maintain the jurisdiction must attach to that tribunal which first exercises it, and takes possession of the thing in litigation.

(1826) *The Ship Robert Fulton*, 1 Paine C. C., 620–626.

Mr. Justice Nelson says:

We have at this term amended the 12th rule of the admiralty, so as to take from the District Courts the right of proceeding *in rem* against a domestic vessel for supplies and repairs which had been assumed upon the authority of a lien given by State laws, it being conceded that no such lien existed according to the admiralty law. We have determined to leave all these liens depending upon State laws, and not arising out of the maritime contract, to be enforced by the State courts.

(1858) *Maguire* v. *Card*, 21 How. 248–251.

Mr. Justice Clifford says:

Authority does not exist in the State courts to hear and determine a suit *in rem*, as in the admiralty courts to enforce a maritime lien. Doubt upon that subject cannot be entertained; but the recent decision of the court holds that such a lien does not arise in a contract for repairs and supplies to a vessel in her home port, and, if not, then it follows that in respect to such contracts it is competent for the States, under the prior decisions of the court, to create such liens as their legislatures may deem just and expedient, not amounting to a regulation of commerce, and to enact reasonable rules and regulations prescribing the mode of their enforcement.

(1876) *Norton, Assignee*, v. *Switzer*, 93 U. S. 355–365, 366.

Mr. Justice Clifford uses almost precisely the same language in

(1868) *The Belfast*, 7 Wall. 624–645, 646.

Overton on the Law of Liens (Banks & Brothers edition), § 679:

If a lien be given to a party by a State statute, the same may be enforced both in the State court and also in the court of admiralty. These latter courts will enforce it because given by the statute, in the case of domestic ships, and will therefore be governed in their construction of the right, not by the rules of admiralty, but as provided by the statute.

Mr. Justice Brown says: The States

may declare that a lien shall exist in cases designated, and provide for its enforcement by a seizure *in rem*.

(1880) *The General Burnside*, 3 Fed. Rep. 228–230.

That the State courts may enforce these State liens has been decided in the following cases:

Hayes v. *Mitchell*, 15 Gray 234.
Coburn v. *Clark*, 3 Allen 207.
McMonagle v. *Nolan*, 98 Mass. 320.
Donnell v. *The Starlight*, 103 Mass. 227.
Donnell v. *Manson*, 109 Mass. 576.
C. H. Burke Mfg. Co. v. *Steamboat A. Saltzman*, 42 Mo. App. 85.

And cases cited in opinion of Mr. Justice Holmes. (Exhibit A.)

RÉSUMÉ.

To summarize the matter, we may briefly consider the three elements entering so conspicuously into it,—the *contract*, the *lien*, the *remedy*.

(1) The contract.

The contract to repair a domestic vessel may be maritime, or non-maritime.

If the contract be "made on land to be performed on land" it is non-maritime.

The People's Ferry v. *Beers*, 20 How. 393–402.
The J. E. Rumbell, 148 U. S. 1–11.

If the contract is maritime, then the contract is a "case of admiralty and maritime jurisdiction."

If the contract is non-maritime, then the contract is not a "case of admiralty and maritime jurisdiction."

(2) The lien.

The lien has been expressly adjudicated to be not a maritime lien. The lien does not exist under the "maritime law as accepted and received in this country."

The lien, therefore, cannot be a "case of admiralty and maritime jurisdiction."

The State can create this non-maritime lien, and this non-maritime lien is a "*jus in re*," a "right of property."

(3) The lien and the contract.

The lien presupposes a contract, but is not the contract.

One, who has finished his contract, is entitled to perfect and preserve his lien.

One, who has perfected this lien, acquires a title, or ownership, in the vessel — this title is absolute and independent.

The only relation between the lien and the contract is, that the value of the title, or interest in the vessel, acquired by the lien, is commensurate with the value of the repairs furnished under the contract.

The fact, that the contract to furnish repairs must be established by one seeking to enforce his lien, is of no significance. This only means, that one claiming a lien must prove his title or right; just as one claiming dower may be required to prove a lawful marriage; just as one entitled as heir may be required to prove the relationship; just as one must prove his title in any case, whether such title depend upon inheritance, or deed, or prescription, or devise, or statutory provision of any sort.

Almost every, if not every title to property may be traced as an outgrowth of previous contractual (expressed or implied) relations, but the title once acquired is perfectly independent of these relations, save in questions of proof.

So that we may confidently assert, that one, who has acquired title by virtue of a lien, whether maritime or State, has an absolute interest in property independent of the mode or history of its acquisition.

The holder of this lien-title may be called upon to prove his title, but all that precedes and leads up to his title, relates simply to proof, and belongs to the realm of evidence.

The fact, that the maritime contract in one case gives rise to a *maritime lien*, and in another case gives rise to a *non-maritime lien*, proves conclusively, that the contract is in no sense the lien, but simply related to the lien as antecedent and entitling thereto. It is this confounding of the lien with the contract, that has given rise to many erroneous expressions, *a. e.*, "enforcing the contract."

A proceeding to enforce a lien is no more a proceeding to enforce a contract, than a proceeding for the recovery of dower is a proceeding to enforce a marriage.

A man enforces his lien, *i. e.*, he seizes and sells the vessel. He never enforces his contract, in any legal sense.

The *completed contract*, the services rendered, the benefits given and received — these are the *consideration* supporting the acquired title — whether such title be in a vessel by virtue of a lien, or in real estate by virtue of the laws regulating the questions of dower and curtesy.

(4) The remedy.

The lien, to be effective, must be enforceable. The only remedy is a proceeding *in rem*, or action directed against the vessel itself. The proceeding *in rem* is itself neither maritime, nor non-maritime. It is not therefore itself a "case of admiralty and maritime jurisdiction." For one who builds a vessel may enforce his lien by a proceeding *in rem* in the State courts; he cannot in fact enforce it in the admiralty courts.

(5) The lien and the remedy.

As an unenforceable lien is valueless, it must follow, that the power to create a lien includes the power of providing for its enforcement. Therefore, when it is said, that a State can create a valid lien, it must mean that the State can provide for the enforcement of the lien created. "Valid," when predicated of a lien, means "enforceable." The lien, while closely related to the remedy, is not the remedy. The remedy is the "means employed to enforce a right." Bouvier's Law Dictionary. *Remedy.*

In this case the proceeding *in rem* is the remedy employed to enforce the *jus in re*.

The remedy is not on the antecedent contract, but on the lien; for the remedy is not applicable to a contract, but applicable only to the lien.

The remedy is a proceeding, or a matter of procedure.

The State being allowed to create the lien must be allowed to provide the only remedy.

There must be provided a court, or forum, where the lien may become effectual by the application of the remedy.

The State creating the lien must provide such a tribunal. But the State cannot compel the admiralty courts to entertain and enforce the State liens (Rule XII).

The State may, therefore, clothe her own courts with authority in the premises, and enable her own courts to enforce these valid State liens by the only means possible, the proceeding *in rem*.

Closely scrutinized, the exercise of jurisdiction by the admiralty courts over the State lien must be regarded as a matter of comity, or convenience. The rejection of jurisdiction is justifiable only on that view of the lien, which regards it as the real *jus in re*, as non-maritime, and as, therefore, not a "case of admiralty and maritime jurisdiction."

Rejection of jurisdiction is the logical attitude, and, in the

absence of a rule assuming jurisdiction, the admiralty courts do not exercise it. The fact, that the admiralty courts now assume and now reject jurisdiction, or the exercise of jurisdiction, while the lien itself is admitted to be valid at all times, shows that the lien is not the remedy. For the remedy at times vanishes, while the lien forever remains.

Turning now from the question, in its broader phase, to the case at bar, and examining the record, we find these facts:

Page 5. (1) The *Tug Glide* was a domestic vessel.

Page 19. (2) The petition of The Atlantic Works was filed and entered in the Superior Court.

Page 19. (3) Process thereupon issued "to attach a certain steam vessel or tug-boat called the *Glide* * * * and summon Jonathan Chase" (*et al.*) "to appear * * * and answer.".

Page 21. (4) The deputy sheriff *attached* the vessel, and *summoned* what parties he could find.

Page 22. (5) The owners of the vessel *all* appeared by counsel, filed answers to the merits of the case (page 26), and were duly heard.

Page 22. (6) A mortgagee was duly represented by counsel.

Page 26. (7) The case was sent to an auditor.

Page 28. (8) The auditor found for the petitioner.

Page 29. (9) Then the following order was indorsed on the process:

Mar. 11, '93.

Lien established in favor of the Atlantic Works, for the sum of $130.86 with interest from Feb. 17, 1891, viz., $147.03. Sale ordered as provided in ch. 191.

DANIEL W. BOND, J. S. C.

Whether the defendant's contract was maritime, does not appear.

The record thus reveals, not a proceeding *in rem* as employed in the admiralty courts, but a proceeding *in personam*, with an incidental attachment.

The proceedings amounted practically to an attachment on *mesne* process, followed by an execution.

The essential and important feature of the proceeding *in rem*, as practised in the admiralty courts, is the seizure and sale of a vessel at the beginning of the suit, and the substitution of the *proceeds of sale*, which are thereupon held in place of the vessel.

These proceedings are frequently, and always may be, *ex parte*.

But it has been decided that, under the Massachusetts Statutes, there can be no sale of the vessel, except upon *final judgment*.

Coburn v. *Clark*, 3 Allen 207.

It appears, therefore, that, as a matter of fact, in the case at bar, there was an attachment of property on mesne process, an appearance of all parties interested, a full hearing on the merits, judgment for the plaintiff, and an order of sale, or an execution.

All this, it is submitted, was a common-law remedy, saved to suitors in all cases.

It was not a proceeding *in rem*, as that term is understood and employed in the admiralty courts.

The vessel in the case at bar was properly under *attachment*, and in the custody of the sheriff, and all of the parties interested were properly before the court.

The court, under these circumstances, had the right to order a sale of the vessel, to satisfy the judgment.

As the decision of the Supreme Judicial Court of Massachusetts, in the case at bar, has not been made a part of the record, the defendant annexes to its brief the opinion of the majority of the court, as delivered by Mr. Justice Holmes.

(See Exhibits A and B.)

As the opinion is, in its entirety, thus embodied in its brief, the defendant respectfully directs the attention of this court to it, as an exhaustive discussion of the matter, and as not only sustaining and fortifying the defendant's position, but as firmly establishing it.

The dissenting opinion of Mr. Justice Morton (in which Mr. Justice Knowlton concurs), it is respectfully submitted, throws no real light upon the matter, but simply reiterates the arguments based, as the respondent has endeavored to show, upon unwarrantable and erroneous assumptions.

The defendant respectfully asks the Supreme Court of the United States to declare that:

A LIEN IS A "JUS IN RE."

A STATE LIEN IS NOT A MARITIME LIEN.

A STATE LIEN IS A VALID LIEN — ALWAYS.

A VALID LIEN IS AN ENFORCEABLE LIEN — ALWAYS.

JOSHUA H. MILLETT,
RALPH W. FOSTER,
Of Counsel.

EXHIBIT A.

ATLANTIC WORKS *v.* TUG GLIDE AND OWNERS.

SUFFOLK, MAY 31, 1892. JANUARY 4, 1893.

157 MASS. 525.

PRESENT: FIELD, C.J., ALLEN, HOLMES, KNOWLTON, MORTON, LATHROP & BARKER, JJ.

OPINION OF THE COURT.

Holmes, J. This is a petition under Pub. Sts., c. 192, § 17, to enforce a lien given by § 14 of the same chapter, for repairs furnished to a vessel — in this case a tug-boat — in her home port. The respondents filed a motion to dismiss for want of jurisdiction, which was allowed by the Superior Court. The only question is whether the Superior Court has a right to exercise the jurisdiction which the statute purports to confer upon it.

There is no doubt that, when the maritime law gives a lien and a proceeding *in rem*, a State statute cannot give the State courts concurrent jurisdiction by professing to create a similar statutory lien. The attempt to do so would be contrary to U. S. Rev. Sts., § 563, cl. 8, and U. S. Rev. Sts., § 711, cl. 3; and the State law would be void. *The Hine* v. *Trevor*, 4 Wall. 555, 569. *The Moses Taylor*, 4 Wall. 411. *The Belfast*, 7 Wall. 624.

Most of the later decisions and dicta go further, and deny the power of State statutes to confer jurisdiction of a proceeding *in rem* upon the State courts, even when the maritime law does not give a lien, if the contract secured by the statutory lien is maritime, as in the case of repairs to a vessel in her home port. *Warren* v. *Kelley*, 80 Maine, 512. *Weston* v. *Morse*, 40 Wis. 455. *Steamer Petrel* v. *Dumont*, 28 Ohio St. 602. *Crawford* v. *The Bark Caroline Reed*, 42 Cal. 469. *Dever* v. *Steamboat Hope*, 42 Miss. 715. *In re Steamboat Josephine*, 39 N.Y. 19. *Sheppard* v. *Steele*, 43 N.Y. 52. *Brookman* v. *Hamill*, 43 N.Y. 554, 557. *Poole* v. *Kermit*, 59 N.Y. 554. *The John Farron*, 14 Blatchf. 24, 26. *The Guiding Star*, 18 Fed. Rep. 263, 267. *The Madrid*, 40 Fed. Rep. 677, 680.

On the other hand, there are decisions and dicta the other way, including one case in this court. *Donnell* v. *The Starlight*, 103

Mass. 227, 230. *Southern Dry Dock Co.* v. *Gibson*, 22 La. An. 623. *Williamson* v. *Hogan*, 46 Ill. 504. *Mitchell* v. *The Steamboat Magnolia*, 45 Mo. 67. *Boylan* v. *The Steamboat Victory*, 40 Mo. 244.

The Supreme Court of the United States has given no decision upon the question. Had it done so, of course we should defer to its authority upon a matter of which it is the final judge. But until there is a direct adjudication by the only tribunal whose decision is an authority, we feel bound to exercise our own judgment upon the merits of the case. The dicta which have been uttered in rendering decisions of the Supreme Court have not been consistent. In *The Lottawanna*, 21 Wall. 558, 580, the jurisdiction of the State courts is denied. In earlier cases, and, if we interpret their language rightly, in later ones, it is said or implied that the State courts can act. *Johnson* v. *Chicago & Pacific Elevator Co.*, 119 U. S. 388, 399. *Norton* v. *Switzer*, 93 U. S. 355, 365, 366. *The Belfast*, 7 Wall. 624, 645, 646. *The Steamer St. Lawrence*, 1 Black 522, 530, 531. *Maguire* v. *Card*, 21 How. 248, 251.

The ground for denying the jurisdiction when the maritime law gives a lien is wanting here. The ground in that class of cases, as has been stated again and again, is that the State law purporting to create a parallel lien and a parallel jurisdiction is void; *The Hine* v. *Trevor*, 4 Wall. 555, 569; *The Belfast*, 7 Wall. 624, 644; *Johnson* v. *Chicago & Pacific Elevator Co.*, 119 U. S. 388, 397; but it has been decided, and it still is assumed by the Supreme Court of the United States, that State laws creating liens like the one before us are valid, and, whatever might be our opinion were the question open to us, we proceed on that assumption without argument. *Peyroux* v. *Howard*, 7 Pet. 324. *The Steamer St. Lawrence*, 1 Black 522. *Ex-parte McNiel*, 13 Wall. 236, 243. *The Lottawanna*, 21 Wall. 558, 581. *The Corsair*, 145 U. S. 335, 347.

If the statute creating the lien is valid, then it would be strange, to say the least, if the law which creates a right were incompetent to protect it, and we are justified in looking with some nicety at an argument which leads to that result. The main argument against the jurisdiction seems to be that the lien derives its quality from the contract, and that, as the latter is maritime, the former must be, and, as a maritime lien, solely within the jurisdiction of the

District Court; or that the statute giving the District Courts jurisdiction "of all civil causes of admiralty and maritime jurisdiction" excludes the States courts from all proceedings in aid of a maritime contract except such as fall within the description of "a common-law remedy," in the saving clause; and that proceedings *in rem* to enforce the statutory lien are a remedy for the enforcement of the contract secured by the lien.

But if the lien created by the State law were maritime in a strict sense, it would be the duty, and not merely the right, of the admiralty courts to enforce it. We do not understand the Supreme Court of the United States to assert the right to abolish libels *in rem* generally by rule. Yet in the successive changes of the twelfth admiralty rule it has asserted and exercised the right to regulate and to permit or to deny proceedings *in rem* in the admiralty to enforce liens of domestic material men. Moreover, as was said in *The Belfast*, 7 Wall. 624, 644, "State legislatures have no authority to create a maritime lien;" and that proposition, as we have observed above, was the ground of decision in that class of cases.

Again, if the lien were a mere matter of remedy, and were simply a right to a proceeding *in rem* as a mode of enforcing the contract to which it is attached, then, if the State law purported to attach one to a maritime contract, it would be equivalent to saying that there shall be a process *in rem* in the admiralty in suits to enforce such contracts, and the question would arise how a State legislature could impose a new process upon a court outside of its power. Traces of such a doubt are to be seen occasionally. *The Red Wing*, 14 Fed. Rep. 869, 871. *In re The Ship Edith*, 11 Blatchf. 451, 454, and 94 U. S. 518. Compare *The Milford*, Swabey, 362. Yet the Supreme Court sustains the law, as has been shown, and under the present twelfth admiralty rule the United States admiralty courts may take jurisdiction to enforce the lien.

We do not understand that the Supreme Court ever has intimated that the operation of the State law is dependent upon the admiralty rule for the time being; so that when the District Courts do not enforce the lien the State courts may do so, but when a rule like the present is in force the Legislature cannot give them jurisdiction. We understand that, if the Legislature has the power at any time, it has it whatever the admiralty rule may be.

It appears to us that the decisions sustaining the law and the

power of the admiralty court to take jurisdiction under it are grounded on the assumption that such a lien is not a mere matter of remedy, but is a right of property, and, as such, is distinct from the proceeding *in rem* by which it is enforced. *Rock Island Bridge*, 6 Wall. 213, 215. *The Maggie Hammond*, 9 Wall. 435, 456. *Ex-parte McNiel*, 13 Wall. 236, 243. *The Lottawanna*, 21 Wall. 558, 579. *The Young Mechanic*, 2 Curt. C. C. 404. *The Barque Havana*, 1 Sprague 402. *The Mary Ann*, L. R. 1 Adm. & Eccl. 8, 11. *The Two Ellens*, L. R. 4 P. C. 161. If this be so, it no more follows from the fact that the contract may give rise to a "civil cause of admiralty jurisdiction" that enforcement of the lien is such a cause than it follows that the foreclosure of a mortgage given to secure the same contract would be, nor does it seem to us to matter that the mode of enforcement is by a proceeding *in rem*. State courts can enforce liens not maritime by proceedings *in rem*. *Foster* v. *The Richard Busteed*, 100 Mass. 409. *McDonald* v. *The Nimbus*, 137 Mass. 360. *Edwards* v. *Elliott*, 21 Wall. 532.

It may be asked how, if the lien is not maritime, the admiralty courts can be justified in enforcing it. It may be, as suggested by Bradley, J., in *The Lottawanna*, 21 Wall. 558, 580, that the United States courts did so in imitation of the colonial courts upon succeeding to them, and that the answer is to be sought in history rather than in logic. Of course, such liens would be recognized in any event when law and justice required it in the distribution of proceeds. *The Harrison*, 2 Abbott (U. S.) 74. *The Cargo ex Galam*, 2 Moore P. C. (N. S.) 216, 236.

In the absence of convincing reasons or binding authority the other way, we feel bound to follow the case of *Donnell* v. *The Starlight*, 103 Mass. 227, 230, to the full extent of the proposition there laid down as settled,—"that the courts of a State have jurisdiction to enforce liens, created by its laws, for labor and materials furnished in constructing or repairing domestic vessels."

EXHIBIT B.

ATLANTIC WORKS *v.* TUG GLIDE AND OWNERS.

SUFFOLK, MARCH 20, 1893. MAY 16, 1893.

159 MASS. 60.

PRESENT: FIELD, C. J., ALLEN, HOLMES, MORTON & LATHROP, JJ.

OPINION OF THE COURT.

Holmes, J. This exception is disposed of by our former judgment in the same cause. 157 Mass. 525. The later decision by the Supreme Court of the United States in *The J. E. Rumbell*, 148 U. S. 1, contains some expressions contrary to our conclusion, but, as the point adjudicated is consistent with it, we feel compelled to adhere to our opinion.